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in the

# Supreme Court

of the

# United States

Term

No. 353

R. G. BARRY CORPORATION

*vs.*

NATIONAL LABOR RELATIONS BOARD

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

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MIAMI REVIEW — 371-4853 — 377-3721

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# in the
# Supreme Court
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No. _____

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R. G. BARRY CORPORATION

*vs.*

NATIONAL LABOR RELATIONS BOARD

---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

---

Petitioner, R. G. Barry Corporation, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in case number 18,510 on February 19, 1969.

## OPINION BELOW

The Court of Appeals did not deliver an opinion in this case, and its Order enforcing the National Labor Relations Board's Order (Appendix C, infra, pp. 43-44) is unreported. The Decision and Order of the National Labor Relations Board and the Trial Examiner's Decision (Appendix B, infra, pp. 3-41) are reported at 162 N.L.R.B. No. 135.

## JURISDICTION

The Order of the United States Court of Appeals for the Sixth Circuit, which constitutes the judgment sought to be reviewed (Appendix C, infra, pp. 43-44) was filed on February 19, 1969, and is otherwise undated.

Under date of May 9, 1969, the United States Supreme Court entered an order (Appendix E, infra, p. 47) extending the time for filing this petition through July 19, 1969.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

## QUESTION PRESENTED

Whether the United States Court of Appeals for the Sixth Circuit has, in conflict with applicable decisions of this Court, and in conflict with the decisions of other Courts of Appeal, interpreted the National Labor Relations Act, Sec. 8(a)(1) (29 U.S.C. Sec. 158(a)(1)) so as to preclude an employer when talking to his employees about unionization, from making any statement which might reasonably cause an employee to fear that unionization might affect him adversely rather than beneficially, regardless of the absence of any threat or promises in the words spoken.

## STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et. seq.) are set out verbatim in Appendix D, infra, pp. 45-46.

## STATEMENT OF THE CASE

The United States Court of Appeals for the Sixth Circuit was the federal court of first instance in this matter, and its jurisdiction was invoked pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. 160 (e)), when the National Labor Relations Board filed its petition for enforcement of its order against Petitioner.

The case originally arose in the context of an ordinary union organizing drive at the Petitioner's plant at Columbus, Ohio (Appendix B, infra, pp. 9-10).

Seeking to organize the Petitioner's employees, the Textile Workers Union of America engaged in an intensive campaign effort, making some seven hundred personal visits to the employees' homes and propagandizing by mass mailings of letters on several occasions, a telephone solicitation campaign, the use of an in-plant organizing committee for continuous solicitation on the job, and the holding of a series of ten to twelve meetings with the employees (Appendix F, infra, pp. 151, 152, 153, 155).

The Petitioner's vice-president was charged with unfair labor practices on account of one talk that he made in response to this campaign.

The vice-president, Mr. Gordon Zacks, invited the employees, ten to twelve at a time, to come to one of the employee lunchrooms if they wished to hear the com-

pany's side of the matter. The supervisors were instructed to tell the employees who was speaking, what the subject would be, and that they were invited but not ordered, to attend (Appendix F, pp. 66-67). Mr. Zacks also testified, and it was found, that the employees were told at the meeting itself that they were free to leave at anytime, either before or during the meeting (Appendix F, infra, p. 68; Appendix B, infra, p. 14).

The Board's employee witness Barbara Blevins testified that she went to Mr. Zacks' meeting because she had already been to the union's meetings, and she wanted to hear both sides, and hear what the company had to say (Appendix F, infra, p. 112).

At each meeting, Mr. Zacks read his remarks, without deviation, from a prepared text (Appendix B, infra, p. 14). The entire talk is reproduced as Appendix G herein.

The Board's trial examiner, the Board, and the Court of Appeals have found that Mr. Zacks threatened to reduce wages and to make working conditions more difficult in the event of unionization by the following remarks:

> "Too many people here at Barry are under the definite mistaken belief that if the union wins the election that the very next day there is going to be a contract signed containing all these promises that the Union has been making. Well, that's not the way this thing works at all. You sit down and you start bargaining and talking about how many holidays are we going to give, what's the vacation policy, what are the fringe benefits going to be. We don't necessarily start from where you are now and try to talk up — the only obligation that the law imposes on us

about bargaining and negotiating a contract is to bargain in good faith and only legal obligation concerning wages is to pay $1.25 per hour. We certainly don't mean to imply that we will go back to $1.25. We are merely pointing out our legal obligations. So you see you might end up with more but you might end up with less. And when that union comes in and when we sit down and negotiate you put all the things that you now have and your current wage program right out there on the table and we bargain about them. If they are not agreed to and if they are not included in the contract you may not have them. * * *

* * * * Why is my family and I — why are we opposed to a union coming into Barry. Well, the reason that we are opposed to this union coming in here is not that we are afraid of the union or afraid of what the union can get from us — believe me they can't get any more for you than you can get for yourself by coming in here and talking to me man to man. But we are opposed to this union because we might lose the flexibility that we now have. We have a lot of flexibility in this operation right now. Under a union contract we might not have this flexibility. If we didn't have a job for you we couldn't transfer you to other work as we do. We might have to send you home. We might have to lay you off. In the past we've traded work for you to avoid layoffs and tried to provide instead year round employment, the union might demand that we lay off and hire somebody else on the other job. Because that means another $5 in monthly dues. Every

time we would do something like that we might have a grievance — every time we would do a thousand things for you that we do now, we might get involved in a grievance session and not only would we get involved in a grievance but we might end up in court. There are just so many things that could be completely changed and completely different here. But the primary reason that we are opposed to a union at Barry is because it could destroy the personal relationship that we have developed with each other. As I've said, you couldn't talk to me or my father or Bessie or your supervisor or anybody else about these matters — you would have to see the shop steward. A wall of separation could be built between us. We could be divided. We have grown and prospered together because we have worked well together. Because we have respected each other as individuals — we have different skills and different jobs — but we've been on the same team. * * * "

(Appendix B, infra, pp. 15-17).

Mr. Zacks is then found to have threatened that the company might go out of business if unionized by the following remark:

"My family has had a lot of fun out of building this business together. But to be very frank with you neither my father or mother or I would be interested in coming to work in a hostile atmosphere. There has been a lot of talk about profits. * * * We've had many chances to sell this business in the past but we didn't want to. We could sell this whole operation today but we don't

want to because my whole family gets a lot of fun out of this operation. I think you know that — I think you know that I get a lot of fun, a lot of bounce from this business and it gives me something to look forward to. In fact I'd get no kick out of quitting tomorrow and never working again. But we could sell this whole operation and take the cash that we get from it and put it in tax-free municipal bonds and we could come out with as much profit as we get from coming in here and enjoying these headaches. And I assure you that we do enjoy them. We like every problem that comes up every day. All we ask is the opportunity to continue in the future as we have in the past. We'd rather have our headaches together than clip coupons from municipal bonds. . . ."
(Appendix B, infra, pp. 18-19).

The trial examiner's decision, now approved by the Board and by the Court of Appeals, is that Mr. Zacks' remarks violated Section 8(a) (1) of the Act, not because they actually contain, expressly or by fair implication, any threat on the part of the Petitioner to engage in the retributive action described in the complaint, but because of the Petitioner's expressed opinion that union representation might, in net effect, be detrimental rather than helpful to the employees. The Decision clearly admits that Mr. Zack's plain words did not have the "definitive meaning" ascribed to them in the complaint, but asserts that these words were unlawful because they made the employees aware of the negative possibilities that might follow unionization and this implanted in their minds a fear of economic jeopardy if they accepted the union (Appendix B, infra, p. 20).

## ARGUMENT

The Petitioner asserts that the writ requested herein should be granted because the Court of Appeals for the Sixth Circuit has rendered a decision, in a highly important area of the federal labor law, which is in conflict with the decisions of this Court and with the decisions of other Circuit Courts of Appeal, within the meaning and intent of Rule 19.1(b) of this Court's Rules.

Traditionally, the courts have held that an employer commits an unfair labor practice in violation of Sec. 8(a) (1) of the Labor Act if he attempts to dissuade employees from unionizing by the use of threats of reprisal or promises of benefits, either express or implied. Petitioner does not quarrel with this rule.

However, the Court of Appeals here holds that an employer violates the Act simply by discussing the negative possibilities connected with unionization in a frank and candid manner. If the employee, becoming aware of these negative possibilities, could reasonably apprehend that unionization might involve economic jeopardy, the employer has broken the law.

Such a construction of the statute effectively eviscerates Sec. 8(c) of the Act, in which Section the Congress sought to protect employers from unfair labor practice charges so long as they did not resort to threats of reprisal or force or promises of benefits in expressing their views, arguments and opinions on the question of unionization.

The Petitioner seriously questions the desirability of a statutory interpretation which tends to prevent the free and open discussion of all important issues prior to a representation election, and which tends to keep the voters in ignorance.

Unionization does in fact involve risk of economic loss to the employee, in one degree or another, depending on such variable facts as the cost of union dues and fees, the level of wages and benefits already in existence, the cost of labor in the open market, and the projected comparative strength of employer and union in the event of a strike. Many strikers, for instance, have lost their jobs completely by being replaced during economic strikes. Some states do, others do not, allow persons who voluntarily cease work in order to strike to collect unemployment benefits. An individual employee of high merit and value can often negotiate a better deal for himself than a union concerned with "across the board" rates will make for him. An employer who knows that he will be firmly held for a term of years to any wage agreement that he makes, regardless of interim developments affecting his ability to pay, is likely to be more cautious and less liberal than he would otherwise be.

Unionization may also involve risks that are not economic. Labor strikes are often emotionally charged and they carry the risk of violent happenings which are repugnant to many employees. Many employees also object to certain union customs and practices, such as the establishment of production ceilings and the prohibition against crossing picket lines.

These are but a few of the many reasons why various employees vote against union representation. The Petitioner asserts that a rule which prohibits the free discussion of such matters prior to an election is undesirable.

The Petitioner asserts that most employees are relatively ignorant of the crucial considerations in regard to unionization, and they, like the Board's witness Blevins, want to hear what both sides have to say (Appendix F, infra, p. 112).

Quite obviously, an organizing union will not dwell upon the negative aspects of unionizing, and the employee will likely be foreclosed from hearing this side of the question unless he hears it from the employer.

The Petitioner's vice-president here did not engage in the use of threats of reprisal or force or promises of benefits, and the decision approved by the Court of Appeals candidly admits that that "definitive meaning" does not appear in the plain language of his remarks (Appendix B, infra, p. 20). Rather, it is found that certain of the vice-president's remarks constituted threats of reprisal merely because he explained how adverse results could occur in the course of the give and take of negotiation in a unionized operation. The decision holds, as a matter of law, that to refer to these possibilities is to threaten to make them happen.

Thus, it is found that Zacks actually threatened to cut wages to the legal minimum, and to reduce employee benefits if required to bargain (Appendix B, infra, pp. 17-18), whereas his actual statement was that he did *not* mean to imply that any wage cut would occur, and

that the employees might end up with more or less after bargaining. The remarks in question are quoted at pp. 15-16 of Appendix B, infra.

In these remarks, Zacks stated that it was a mistake to believe that a contract embodying the union's promises would be signed the very next day after the election, but that the company and the union would bargain over these matters. His subsequent remarks related to the true fact there were no *guarantees* except the legal obligation to pay a minimum wage, and the obligation to bargain in good faith, and he ended by emphasizing that the employees would in the end wind up with, and only with, those wages and benefits agreed to in negotiations.

It is then found that Zacks threatened to make working conditions more difficult (Appendix B, infra, p. 17, fn. 3), when his actual remarks constituted nothing more than a plea in favor of flexibility in dealing with employee work assignments and grievances and against the rigidity of a union system of job classifications and formal grievance procedures (Appendix B, infra, pp. 16-17).

The decision approved by the Court of Appeals also finds that Zacks threatened that the company would go out of business if the union won the election, when his quoted remarks relate only to the possibility of the Zacks family retiring from the business (Appendix B, infra, pp. 18-19), but leaving it intact and in existence as a going concern.

The paragraph of Zacks' talk referred to in the decision at no point makes any reference whatsoever to a closing of the business itself, or to the loss of employee

jobs. The finding that Zacks threatened the employees with "uncertain job tenure" (Appendix B, infra, p. 19) is therefore wholly unwarranted.

The Petitioner submits that it is clear from the decision, and from what is said above, that the Board and the Court of Appeals are enforcing a rule of law under which an employer is precluded, not only from engaging in the use of threats and promises, but from engaging in any discussion from which an employee might become aware of the possibility that unionization could have a negative effect. Indeed, in the case of the "threat" to go out of business, the employer is precluded from raising any matter which might prompt an employee, thinking independently, to become aware of some other adverse possibility.

In either case the decision here is in conflict with the decisions of this Court, and with the decisions of other Circuit Courts of Appeal.

This Court has held, in *National Labor Relations Board v. United Steelworkers*, 357 U.S. 357 (1958), that the right of an employer to engage in non-coercive anti-union solicitation is affirmatively protected by the employer free speech provision of Sec. 8(c) of the Act. The limitation expressed in that statute and quoted with approval by this Court in the cited case is that the employer's expressions contain "no threat of reprisal or force or promise of benefits." In the absence of such threats or promises, this Court referred to the employer's expression of his anti-union views as being "legally authorized" (357 U.S. at 364).

Consistently, in *Linn v. United Plant Guard Workers of America, Local* 114, 383 U.S. 53 (1966), at page 62 of the opinion, this Court emphasized the Congressional policy favoring free and wide-open debate of important issues between labor and management, stating:

> "We acknowledge that the enactment of Sec. 8(c) manifests a congressional intent to encourage free debate on issues dividing labor and management. And, as we stated in another context, cases involving speech are to be considered 'against the background of a profound . . . commitment to the principle that debate . . . should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks."

Petitioner submits that these decisions are clearly disregarded in the present case, where the Labor Board is permitted and encouraged to find threats and promises where none in fact exist, by gratuitously assuming that an employer threatens to cause a thing to happen if he merely mentions it.

If employers are to be prohibited from mentioning the negative aspects of unionization, on the ground that to mention is to threaten, then the policy favoring free debate must necessarily be defeated, and workers are fated to vote in representation elections in ignorance of the realities involved. As the present decision stands, it makes no difference if the employer indicates no intention to influence events so as to bring the adverse possibility about, or even that he affirmatively disavows any such intention, as in the matter of cutting wages to the legal minimum which is

involved here. The question of violation is made to depend, not on what the employer says or does, but upon what the employee might assume.

Petitioner submits that the employer expressions involved here, admittedly and in indisputable fact, did not contain the threats or promises referred to in Sec. 8(c), and that the subject decision is therefore in conflict with the cited decisions of this Court.

A similar conflict between the instant decision and the existing decisions of other Circuit Courts of Appeal is equally clear.

The Second Circuit Court of Appeals holds squarely that an employer's discussion of the possible adverse consequences of unionization cannot be held the equivalent of a threat to produce such consequences. In *N.L.R.B. v. Golab Corp.*, 388 F. 2d 921 (1967), that Court stated:

> "In holding the passages we have cited to be violations, the Trial Examiner stated simply that 'the letters and speech . . . were calculated to create and instill in the minds of employees a fear of loss of privileges and economic suffering as a result of their adherence to the Union, and constitute interferences, restraint and coercion within the meaning of Section 8(a) (1) of the Act.' This is reading the Act as if §8(c) did not exist; while there is a risk that an employer's predictions of adverse consequences from unionization may be taken as a threat to produce them, to hold that this danger alone suffices to convert a prediction into a threat of reprisal would go back to the very

> position of the early 1940's which §8(c) was adopted to change . . . Only if respondent's words contained a 'threat of reprisal' did they go beyond the bounds of §8(c)."

The rule obtaining in the Ninth Circuit is the same, and was expressed as follows in *N.L.R.B. v. TRW Semiconductors, Inc.*, 385 F.2d 753 (1967):

> "The mere fact that campaign propaganda may induce fear — does not deprive it of the protection of section 8(c). That is the nature of campaign propaganda."

The Court of Appeals for the Eighth Circuit agrees, and holds that an employer's statements to the effect that he is not required to make concessions in bargaining and that the employees are not assured of coming out of bargaining with any particular wages, hours or working conditions, is lawful. In *N.L.R.B. v. Wilson Lumber Co.*, 355 F.2d 426 (1966), that Court, in commenting upon such an employer statement, said:

> "Wilson also expressed his intentions regarding the important matter of bargaining with the union. . . . Respondent recognized that if the union were successful, it would be required to enter into sincere good faith negotiations with the union, but would not be compelled to accede to Union demands. . . . It should be stressed that the Respondent did not, in the handbill and speeches, intimate that it would not bargain in good faith with the union, . . ."

The Seventh Circuit Court of Appeals also holds that that the line between lawful argument and unlawful threats is the line between statements suggesting that the employer will affirmatively seek to thwart unionization by visiting economic disadvantages upon his employees and statements which merely remind the employees of those disadvantages which sometimes flow from unionization itself, the latter type of statement being immune from the ban of Sec. 8(a) (1) and protected by the free speech provision of Sec. 8(c) (Mallory & Co., v. N.L.R.B., 389 F.2d 704 (1967)).

It is thus apparent that the decision as to which review is sought is in direct conflict with the decisions of at least four other Circuit Courts of Appeal, on the same important subject.

Petitioner submits that the National Labor Relations Act was never intended as a device by which meaningful debate on all relevant issues prior to a representation election would be foreclosed, and that the Congress never intended that employees should be deprived of pertinent information relating to unionization. And it is obvious that there can be no meaningful argument if the employer, who alone may be expected to discuss these matters, is foreclosed from talking about the disadvantages that can, and often do, come to unionized employees.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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*Attorney for Petitioner*
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1201 Brickell Avenue
Miami, Florida 33131

## CERTIFICATE OF SERVICE

The undersigned certifies that a printed copy of the foregoing Petition for Writ of Certiorari and Appendixes thereto has this day been served by airmail first class, return receipt requested, on the following counsel at the addresses listed below:

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Glenn L. Greene, Jr.

Dated at Miami, Florida, this 17 day of July, 1969.

SUPREME COURT, U.S.
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# In the Supreme Court of the United States

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No. 353

R. G. BARRY CORPORATION

*vs.*

NATIONAL LABOR RELATIONS BOARD

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT

## APPENDICES A - H

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MIAMI REVIEW — [illegible]

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## APPENDIX A

No. 18,510

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

R. G. BARRY CORPORATION,
Respondent.

ORDER

BEFORE: EDWARDS and COMBS, Circuit Judges, and McALLISTER, Senior Circuit Judge.

On a petition for enforcement of the order of the National Labor Relations Board in the above case, (162 N.L.R.B. No. 135, 1967), after hearing the arguments of counsel, and upon the agreement of the parties that the third and fourth paragraphs of the order be stricken; and the Court being duly advised:

Now, therefore, it is DECREED that, as amended by the omission of the two paragraphs above mentioned, the order of the Board is hereby granted enforcement.

George Edwards
Circuit Judge

Bert Combs
Circuit Judge

Thomas McAllister
Senior Circuit Judge

## APPENDIX B

162 NLRB No. 135 D-9532
Columbus, Ohio

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

R. G. BARRY CORPORATION

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

Cases Nos. 9-CA-3492
9-CA-3404

## DECISION AND ORDER

On July 14, 1966, Trial Examiner Lowell Goerlich issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief, and the General Counsel filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications:

We agree with the Trial Examiner that the Respondent violated the Act by threatening its employees with more difficult working conditions, reduction of their wages, and loss of work if the Union was selected as their bargaining representative; by interfering with the right of its employees to give statements to Board agents; and by interrogating them as to their union affiliation. In our view the Respondent's conduct reasonably tended to coerce the employees[1] However, we cannot agree with his finding that the Respondent violated Section 8(a)(1) of the Act by maintaining its no-solicitation rule. The provision, which appears in the employee handbook, is as follows:

> United Appeal, which supports many of Columbus and Franklin County Health and Welfare Agencies, is the only solicitation within our plant authorized or permitted by the Company. Re-

[1] *Monroe Auto Equipment Company*, 146 NLRB 1267, 1275, footnote 23.

quests for funds for other charitable purposes, or for gifts to individuals, are permitted only when approved by the Personnel Department.[2]

As we read it, this rule is reasonably interpreted as applying only to the solicitation of chartable contributions. It is significant, in this regard, that the rule in question requires approval only for "requests for funds for other charitable purposes, or for gifts to individuals." While the first sentence does prohibit all "solicitations" at any time, other than for United Appeal, we cannot say that, when read in its entirety, the rule can be construed as prohibiting employees from soliciting for the Union during their nonwork time.

In these circumstances, the rule, at worst, remains ambiguous, and collateral evidence was properly admitted as to its interpretation and application.[3] In this connection the Respondent testfied, without contradiction, that the rule was neither intended to apply, nor understood by the employees as applying, to union solicitation, as demonstrated by the fact that employees in fact solicited continuously for the Union during their nonworking time in accordance wth a long-standing policy of the Respondent. As we cannot conclude, in view of this undisputed evidence, that the rule interfered with the employees' right to self-organization,[4] we shall dismiss the pertinent allegations of the complaint.

---

[2]The Trial Examiner found, and we agree, that another rule prohibiting employees from "leaving work stations . . . or visiting during working hours" was lawful.

[3]See, e.g., *Ferguson-Lander Box Company*, 151 NLRB 1615.

[4]*Lion Knitting Mills Company*, 160 NLRB No. 55; *Ferguson-Lander Box Company, supra*; *Harvey Aluminum (Incorporated)*, 156 NLRB No. 115, TXD section III E.

The General Counsel also contended, and the Trial Examiner found, that the Respondent violated the Act by refusing to allow the Union to address the employees at the Respondent's plant while it maintained in effect an unlawful no-solicitation rule. Even if it be assumed that such conduct would be violative of the Act, it is clear that an essential premise of the General Counsel's contention as stated by him has not been established, since we have found that Respondent did not maintain an unlawful no-solicitation rule. We shall, therefore, also dismiss that allegation of the complaint.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified herein, and hereby orders that the Respondent, R. G. Barry Corporation, Columbus, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete paragraphs 1(c) and (d) of the Recommended Order and indented paragraphs 4 and 5 of the Notice attached thereto.

Dated, Washington, D. C., Feb 7 1967.

| | |
|---|---|
| John H. Fanning, | Member |
| Gerald A. Brown, | Member |
| Sam Zagoria, | Member |

NATIONAL LABOR RELATIONS BOARD
(SEAL)

TXD-429-66
Columbus, Ohio

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 9-CA-3492
9-CA-3404

R. G. BARRY CORPORATION
and
TEXTILE WORKERS UNION OF
AMERICA, AFL-CIO

**Jack V. Baker, Esq.**, of Cincinnati, Ohio, for the General Counsel.

**Glenn L. Greene, Jr., Esq.**, of Miami, Fla., for the Respondent.

**Daniel B. Gordon, Esq.**, of New York, N. Y., and **James J. Kennedy**, of Cleveland, Ohio, for the Textile Workers Union of America, AFL-CIO.

## TRIAL EXAMINER'S DECISION

### Statement of the Case

Upon charges filed by the Textile Workers Union of America, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board by the Regional Director for the Ninth Region on July 21, 1965, and upon February 25, 1966, issued a complaint and notice of hearing respectively in Case No. 9-CA-3492 and Case 9-CA-3404 naming as the Respondent R. G. Barry Corporation. On February 25, 1966, these cases were consolidated for hearing. The complaint in Case No. 9-CA-3492 alleged that the Respondent had violated Section 7 of the Act by posting or causing to be posted a notice to employees advising them in effect not to talk or otherwise cooperate with agents of the Board in regard to the latter's investigation of unfair labor practices filed by Charging Party pending against the Respondent in Case No. 9-CA-3404, by urging them to have Respondent's attorney present during any interviews by agents of the Board and by instructing them not to sign any statements for any agents of the Board. The complaint in Case No. 9-CA-3404 alleged among other things that the Respondent had violated Section 8(a)(1) of the Act by compelling Respondent's employees to attend small group meetings during working time at which meetings employees were threatened that the Respondent would make working conditions more difficult, including a reduction of hourly wages, and that the Respondent might go out of business if the employees selected the Union as their bargaining agent; by unlawfully interrogating employees; by maintaining, distributing, enforcing, and giving effect to an

illegal no-solicitation rule; by denying the Union's request on November 17, 1964 for an opportunity to address the Respondent's employees assembled during work time at the Respondent's plant in the same manner and under the same circumstances existing during Respondent's addresses to its employees while it maintained in effect an unlawful no-solicitation rule; and by failing and refusing to grant the Union's request on November 30, 1964, for a list containing the names and addresses of Respondent's employees who were potential eligible voters. The Respondent denied these allegations by answer timely filed.

The questions before the Trial Examiner concern the validity of the foregoing allegations.

The foregoing cases came on to be heard before the undersigned Trial Examiner, Lowell Goerlich, on May 16 and 17, 1966, at Columbus, Ohio. At the hearing each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally upon the record, to submit proposed findings of fact and conclusions of law and to file briefs. A brief was filed by the Respondent, but the General Counsel and the Union failed to file briefs.

Upon the whole record and from his observation of the witnesses the Trial Examiner makes the following:

## Findings of Fact

### I. The business of the Respondent

The Respondent, R. G. Barry Corporation, is an Ohio corporation engaged in the manufacture of soft goods

with its office and plants located in Columbus, Ohio. During the past 12 months, which is a representative period, Respondent had a direct outflow of goods in interstate commerce valued at $50,000 which it sold and shipped from its Columbus, Ohio, plants to points directly outside of the State of Ohio.

The Trial Examiner finds, that the Respondent is now and has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to exercise jurisdiction herein.

## II. The labor organization involved

Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. The unfair labor practices

### Case No. 9-CA-3492

On February 8, 1966, the Respondent posted the following notice in its plant.

SPECIAL NOTICE

It has come to my attention that some of our Barry team members have been bothered at their homes by strangers who say that they want to interrogate our people. One employee was told to be at home at a certain time so the stranger could question her.

We have no idea who these people are. One said he was a "government man". He said he did not want our team members to tell the company about the call.

The whole thing seems very strange and completely out of keeping with the normal American way of life. No government people have informed us about any such thing.

I immediately checked into this with our attorney. He said you do not have to see any of these mistery callers — whether they are union men, government men, or simply some salesman trying to get into your house.

Our attorney says we should advise you of one thing; DO NOT SIGN ANYTHING THESE PEOPLE ASK YOU TO SIGN.

You have a right to have your attorney or our company attorney present before you say or sign anything!

As far as we know, the NLRB has finished its investigation of the Union "charges" that were filed after you rejected the Union on December 2. We cooperated with the NLRB and will do so at any time they want any further information to which they are legally entitled.

Don't let these strangers upset you or force you to say anything or sign anything against your will. You have a perfectly legal right to refuse to see or talk to them.

I am sorry this union trouble keeps causing you problems, and I hope that it will soon be a completely dead issue — as it should have been after you turned the

Union down flat in your overwhelming vote on December 2. The important thing now is don't be frightened by any mystery callers. **You have a perfect legal right to refuse to talk with them or to sign anything.**

If anyone causes you any trouble about this, see your supervisor or call me, if you want to.

Regards, Gordon Zacks

The notice was posted at a time when charges were pending in Case No. 9-CA-3404.

The General Counsel contends that by posting the notice the Respondent violated Section 8(a)(1) of the Act.

It appears to the Trial Examiner that the notice posted by the Respondent is of the same import as the remarks found by the Board to have been in violation of Section 8(a)(1) of the Act in **Certain-Teed Products Corporation,** 147 NLRB 1517, 1519, 1520. Hence the Trial Examiner finds that the Respondent by posting the notice on February 8, 1966, during a period when unfair labor practice charges were pending against it with the Board, interfered with the rights of employees to obtain redress from the Board and thereby violated Section 8(a)(1) of the Act, It is clear that the notice tended to discourage employees from supplying information to a Board agent and to hinder the Board in investigating charges pending before it against the Respondent.

Case No. 9-CA-3404

## A. The remarks of President Gordon Zacks

During a union organizational campaign which culminated in an election for bargaining representative on December 2, 1965, Gordon Zacks, president of the Respondent employer, addressed about 50 meetings of employees on company time and property. The meetings followed the same format with President Zacks reading the same prepared text at the commencement of each meeting. After the conclusion of his prepared text, the meetings were opened to questions and discussions. Some employees asked questions and made comments.

The meetings were held in a 20-foot square lunch room in the employer's plant customarily used by employees. Twelve to fifteen employees attended each meeting. Two to four meetings were held a day. The employees were advised of the meetings by their supervisors. Meetings were kept small and were scheduled "so there would be no crippling effect" to production in any plant area and to cause a "minimum disruption" to the Respondent's "production flow." Respondent's Vice President Scott recorded the names of employees attending the meetings.

When the employees arrived at the lunch room they found on the tables in front of them a copy of **America's Textile Reporter** containing "The Henderson Story" and a copy of the letter the Union had written to the Respondent demanding recognition.

Zacks offered the employees a cup of coffee and doughnuts and then allowed them to look over the mate-

rials on the tables in front of them. Zacks announced that he did not want to say anything illegal and that his attorney had approved the remarks he would read. He then commenced reading from a prepared text from which he did not deviate.

Not all of the employees attended a group meeting inasmuch as there was not enough time before the election to get around to all of them. A mass general meeting was held to contact the remaining employees.

Zacks' remarks were trechantly antiunion in tone and were a part of the Respondent's antiunion preelection campaign.[1] Zacks prefaced his remarks with the statement:

"Now before we get started I want everybody to know that **you are not required to stay.** If you want to leave, now, feel perfectly free to leave. You know what we are going to talk about and if you are not interested in what we are going to say or if you don't think you want to hear it, you are perfectly free to leave. Or, if during this meeting you want to get up and leave feel perfectly free to do so. But what I want to do today is present some facts to you — nothing more — I want to put some facts on the table and let you consider them or do whatever you want to do with them so you can stay, or leave, or whatever you want to do. However, under our company policy the time spent here will be paid to you at average." * * * * *

[1]Respondent's letters addressed to employees contained the footnote:
LET US CONTINUE WITH PEACE, PROGRESS AND PROSPERITY VOTE "NO"!!

The record is barren of any evidence that an employee was compelled to attend a meeting or that an employee who appeared at a meeting did not remain throughout the meeting. The meetings were voluntary in the sense that the employee was free not to attend or to leave a meeting, if he were willing to accept the inferences which might be drawn therefrom.

The reoccurring theme of Zacks' remarks was the lugubrious consequences of the employees' choice for the Union.

First: The complaint alleges that Zacks' remarks were coercive in that Zacks threatened employees that "Respondent would make working conditions more difficult, including a reduction of hourly wages" if its employees chose the Union as their bargaining agent. Zacks' remarks directly bearing upon these alleged threats are as follows:

> **Too many people here at Barry are under the definite mistaken belief that if the union wins the election that the very next day there is going to be a contract signed containing all these promises that the Union has been making. Well, that's not the way this thing works at all.**[2] You sit down and you start bargaining and talking about how many holidays are we going to give, watch the vacation policy, what are the fringe benefits going to be. We don't necessarily start from where you are now and try to talk up — the only obligation **that the law imposes on us about**

[2]All emphasis appears in the transcribed text of Zack's remarks offered into evidence.

**bargaining and negotiating a contract is to bargain in good faith and only legal obligation concerning wages is to pay $1.25 per hour.** We certainly don't mean to imply that we will go back to $1.25. We are merely pointing out our legal obligations. **So you see you might end up with more but you might end up with less. And when that union comes in and when we sit down and negotiate you put all the things that you now have and your current wage program right out there on the table and we bargain about them. If they are not agreed to and if they are not included in the contract you may not have them.** * * * *

* * * * Why is my family and I — why are we opposed to a union coming into Barry. **Well, the reason that we are opposed to this union coming in here is not that we are afraid of the union or afraid of what the union can get from us — believe me they can't get any more for you than you can get for yourself by coming in here and talking to me man to man.** But we are opposed to this union because we might lose the flexibility that we now have. We have a lot of flexibility in this operation **right now. Under a union contract we might not have this flexibility. If we didn't have a job for you we couldn't transfer** you to other work as we do. We might have to send you home. We might have to lay you off. **In the past we've traded work for you to avoid layoffs and tried to provide instead year round employment, the union might demand that we lay you off and hire somebody else on the other**

job. Because that means another $5. in monthly dues. Every time we would do something like that we might have a grievance — every time we would do a thousand things for you that we do now, we might get involved in a grievance session and not only would we get involved in a grievance but we might end up in court. There are just so many things that could be completely changed and completely different here. But the **primary reason that we are opposed to a union at Barry is because it could destroy the personal relationship that we have developed with each other. As I've said, you couldn't talk to me or my father** or Bessie or your supervisor or anybody else about these matters — you would have to see the shop steward.[3] **A wall of separation could be built between us.** We could be divided. We have grown and prospered together because we have worked well together. Because we have respected each other as individuals — we have different skills and different jobs — but we've been on the same team. * * * *

In the foregoing excerpts from Zacks' remarks it is observable that the employees were told that bargaining would not commence with the assurance of a continuance of current employee benefits but on the con-

[3]The implication of this language is that the Respondent would not, if the employees chose the union, honor the employees' statutory right to "present grievances to their employer and to have such grievances adjusted without the intervention of the bargaining representative." See Section 9(a) of the Act. Implicit in the Respondent's portentous rejection of this right, considered by Congress to be of such importance as to justify its placement by amendment in the Act, was the threat that working conditions would be more difficult if the Union were successful in the election.

trary, current employee benefits would be exposed to the chance of diminution in that the fruits of bargaining, conditioned upon the Respondent's agreement, might result in fewer benefits. Indeed the suggestion is trenchant that wages might fall to $1.25 an hour, the amount which the Respondent asserted it was legally required to pay to its employees. The ineluctable import of Zacks' language is that the risk of choosing the union was the risk of endng up with fewer employee benefits because the Respondent, an antiunion employer would be likely to so will, and because union represented employees might expect fewer concessions from an antiunion employer. Such idea again appears in Zacks' remarks to the effect that under a union contract, if the Respondent had no job for an employee, he could not be transferred but might be sent home or laid off.[4] Hence, according to Zacks, union selection entailed the risk of whether an employee would be laid off or retained on the Respondent's payroll.

Second: The complaint also alleges that Zacks' remarks were coercive in that "the Respondent might go out of business if the employees selected the Union as their bargaining agent."

Zacks' remarks bearing on this alleged threat are as follows:

> "My family has had a lot of fun out of building this business together. **But to be very frank with you neither my father or mother or I would be interested in coming to work in a hostile atmosphere. There has been a lot of talk about**

[4]Cf. Harvey Aluminum (Incorporated), 156 NLRB No. 115.

**profits.** * * * * We've had many chances to sell this business in the past but we didn't want to. We could sell this whole operation today but we don't want to because my whole family gets a lot of fun out of this operation. **I think you know that — I think you know that I get a lot of fun, a lot of bounce from this business and it gives me something to look forward to.** In fact I'd get no kick out of quitting tomorrow and never working again. **But we could sell this whole operation and take the cash that we get from it and put it in tax-free municiple bonds and we could come out with as much profit as we get from coming in here and enjoying these headaches.** And I assure you that we do enjoy them. We like every problem that comes up every day. All we ask is the opportunity to continue in the future as we have in the past. We'd would rather have our headaches together than clip coupons from municiple bonds. * * * *

It would have been a dull employee indeed who, from the foregoing would not have grasped the Respondent's inference that, if the Union succeeded, the Respondent would sell the plant, put the proceeds in bonds and clip coupons. Zacks thus posed to the Respondent's employees the alternatives of uncertain job tenure vis-a-vis the **status quo** if the Union were defeated. That Zacks intended his message to be a warning is clear from its emphasis and emotional context. Moreover, there is not the slightest suggestion in the record that Zacks, who repeated his remarks approximately 50 times to groups of the Respondent's employees at the Respondent's expense, engaged in vapid discourse. Zacks' objective was to de-

feat the Union. Pervading Zacks' remarks was a conscious and studied effort to achieve coercive persuasion by the use of words and phrases so camouflaged as to hide their definitive meaning yet nevertheless to implant in the employees' minds fear of economic jeopardy if they chose the Union as their bargaining agent. One versed in expertise in the field of industrial relations may not overlook the fact that such devices for the production and dissemination of antiunion election propaganda have become a widely practiced art. An employer does not commit an unfair labor practice if he expresses or disseminated "vews, argument or opinion" whether in written, printed, graphic or visual form, if such expressions or disseminations contain "no threat of reprisal or force or promise of benefit." (See Section 8(c) of the Act.) This provision of the Act allows employers to participate in preelection campaigns for bargaining representatives. An employer may engage in noncoercive antiunion solicitation, a right which is "protected by the so-called 'employer free speech' provision of Section 8(c) of the Act." **N.L.R.B. v. United Steel Workers of America, CIO,** 357 U.S. 357, 362. Nevertheless, the General Counsel maintains that the above quoted statements were not privileged under Section 8(c), but were threats of reprisal. The Trial Examiner agrees, for a Respondent employer's representations that the selection of a union as bargaining agent will result in loss of employee benefits or adversely affect the employees' job tenure over which the employer has complete control are inherently coercive in nature and fall without the protection of Section 8(c) of the Act. The Respondent, by threatening employees with loss of benefits and jobs in the language above set forth, encroached upon employees' rights guaranteed by Section 7 of the Act, for which reason the Trial Examiner finds the Respondent violated 8(a)(1) of the Act.

By reason of the subtleties employed, it is many times difficult to categorize the indicia of unlawful union preelection propaganda. However, there seems to emerge from the cases on this subject a proposition that may be expressed thusly: if the antiunion preelection propaganda arguably falls within the proscription of Section 7 of the Act, it is unlawful and exceeds the permissive limits of Section 8(c) of the Act. Hence, if the antiunion preelection propaganda is "arguably coercive," (that is to say that an employee's natural response to such propaganda is less than the untrammeled expression of a freedom of choice for a bargaining representative), the propaganda encroaches upon the rights guaranteed employees under Section 7 of the Act and is in violation of Section 8(a)(1) of the Act. The use of words "arguable coercive" exposes the employee indubitably to coercive impact and persuasion, for it is the employee's probably response which is controlling. "Since it is the policy of the Act to protect employees in a free choice of a bargaining representative, the law looks to what the listener-employees reasonably could have inferred from what was said and done by one authorized to engage in the antiunion preelection campaign." **Hendrix Manufacturing Company** v. **N.L.R.B.**, 321 F.2d 100, 104 (C.A. 5).

The Trial Examiner has no doubts that the excerpts from President Zacks' remarks set out above, as well as his remarks as a whole, were "arguably coercive."

### B. The interrogations

President Zacks testified that the Respondent's supervisors were expected to report to him those issues in which the employees were interested and whether the

employees' meetings described above "were dealing with the issues and answering questions that were on the minds of the people." Zacks testified, "I instructed the employees' supervisors to make themselves available and be accessible to the people whether they came back from the meeting today or whether they hadn't been to the meeting or whether they came back a month ago from the meeting or 20 days ago, so they would be available to answer questions.

If they do not know the answers to the questions, I requested them to bring them to me so we could get an answer." According to Zacks this procedure was followed to "evaluate the impact" of the meetings upon the employees.

Some time during the month of November, 1965 Supervisor Ethel Moore engaged in conversation with employee Barbara Blevens at her work station both before and after Blevens had attended one of the employees' meetings described above. In the conversation with Blevens before the meeting Moore said that she "just wondered what [Blevens] thought about the Union and why [she] thought the girls wanted a Union." Moore also asked Blevens whether she was "satisfied" with her job. After the meeting Supervisor Moore came to Blevens' machine and said "Boy, the tension is getting me down." Blevens replied, "It's not bothering me," whereupon Moore said, "I just as soon have the Union election over with, wouldn't you?" Blevens answered, "Yes." Then Supervisor Moore inquired, "Do you know why the women, why the girls want the Union?" Blevens answered, "I imagine * * * * * to protect their job. Most places have a union for that reason." Whereupon Supervisor Moore asked, "Are you

satisfied with your job" Blevens replied, "I'm satisfied with everything except when we make bonus they take half. I don't think that's fair. We work for money; they don't." Moore then asked Blevens whether she was for the Union. Blevens didn't reply that she was for the union but she said she thought everybody should have a union. According to Blevens, Moore asked her several times whether she wanted a union; she told Moore that she "thought the reason why most of [the employees] wanted a union was to protect their jobs, because they would transfer [them] around and then [they] were supposed to be paid off—standard. Sometimes [they were]; sometimes [they weren't]."

Employee Virginia Cooley testified that Supervisor Bea Hyder inquired of her shortly after October 8, 1964, why Cooley didn't like her. Cooley replied "Well, it's the manner that you treat the girls * * * * * if you happen to have trouble at home * * * * * you usually come in here and take it out on us." Sometime during the conversation Supervisor Bea Hyder said, "[Y]ou surprised me when I learned that you were for the Union." She further asked why the girls wanted a union. Cooley replied that with a union the girls would at least get a "fair shake." Bea Hyder said, "What do you mean by that?" Cooley replied, "Well, they wouldn't be taking half of our bonus," and "if a girl came in on Saturday * * * and she was unable to come back in on Monday, she wouldn't loose her overtime that way." According to Cooley, Bea Hyder commented further that the Respondent would not let the employees "have a Union in this factory," * * * [b]ecause the factory could close its doors first." Cooley commented that she didn't "believe" that. Whereupon Bea Hyder replied, "[T]hey would if they had to move out

piece by piece, * * * * they would move at night, piece by piece."

Employee Alberta Warner, a witness for General Counsel, was ill. The parties stipulated that if she were called she "would testify that on November 16, 19 and 64, after having attended one of the meetings which have been discussed here, that she was approached by her supervisor, Bea Hyder, who asked her, "What do you think about the Union?' "

The Respondent presented no evidence to rebut the foregoing testimony. Thus the Trial Examiner credits the testimony of the General Counsel's witnesses. The interrogations by these supervisors appear to have been in response to the instructions of President Zacks. It seems clear that the interrogations were used to elicit important information which would be most useful to the Respondent for combating Union affection. Moreover, the questioning occurred in a background of employer hostility to union organization and served no legitimate employer purpose.

The conduct of Supervisors Bea Hyder and Ethel Moore, detailed above, was of such a character as to reasonably tend to coerce, restrain and interfere with employees in the exercise of their rights guaranteed by Section 7 of the Act and was in violation of 8(a)(1) of the Act.[5]

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[5]In respect to the General Counsel's claim that the alleged interrogation of Barbara Blevens by President Zacks was unlawful, it is the opinion of the Trial Examiner that the General Counsel has not sustained his burden in this regard.

### C. The solicitation rules and the Respondent's refusal to grant the Union facilities for addressing the Respondent's employees on company time and property

First: The General Counsel alleges that the following language appearing in "The R. G. Barry Employee Handbook" constitutes an unlawful no-solicitation rule.

> "* * * and leaving your work station or plant or visiting during working hours. None of these acts is permitted. A violation can cause the loss of your job. * * *"

The language is incorporated in the following paragraph.

> **Instructions**
>
> "Traditionally at Barry we have always gotten along well together. For example, your supervisor gives you instructions to help you in your job. Refusal to follow them is a serious offense and can result in immediate dismissal. Other serious practices include use of profane, foul, abusive and threatening language; practical jokes and horse play; use of intoxicating beverages, and leaving your **work station or plant or visiting during working hours.** None of these acts is permitted. A violation can cause the loss of your job. These rules are to protect you and provide a wholesome atmosphere in which to do your job." (Emphasis supplied.)

Substantially the same language was approved by the Board in **Livingston Shirt Corporation,** 107 NLRB 400,

405 for which reason the Trial Examiner finds that the rule is not unlawful.[6]

Second: The General Counsel also alleges that the following language appearing in "The R. G. Barry Employee Handbook" constitutes an unlawful no-solicitation rule.

"**Solicitations**

> United Appeal, which supports many of Columbus and Franklin County Health and Welfare agencies, is the only solicitation within our plant authorized or permitted by the Company. Requests for funds for other charitable purposes, or for gifts to individuals, are permitted only when approved by the Personnel Department."

In view of the Board's holding in **Peyton Packing Company, Inc.**, 129 NLRB 1275, 1280, 1281, the rule is unlawful on its face. In the **Peyton Packing Company** case, **supra**, a rule which provided "the only soliciting allowed at the plant will be for the United Fund or other recognized and established charities, and these must be approved by the Company. No other soliciting of any kind will be allowed," was declared "an unlawful restriction upon the rights of employees to self-organization" and that by promulgating said rule, to the extent that it was applicable to nonworking time, Respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, within

[6]The rule referred to in *Livingston Shirt Corporation, supra*, provided "Activities for or against any union must not be carried on *during working hours.*" (Emphasis added.)

the meaning of Section 8(a)(1) thereof. The Trial Examiner finds no substantial variance between the **Peyton Packing Company** rule and the rule in the present case. However, President Zacks explained,

> "The purpose of that rule was to prevent or to avoid the interruptions to work and the inconvenience to our associates of outsiders coming into the plant and interfering with them again on Company time and on Company property.
>
> This rule did not apply internally, to employees within the Company."

The phrase "for gifts to other individuals" was defined by Zacks as "referring to the blind, the deaf and the handicapped, as well as * * * * an Adopt-a-Family Program at Christmas time, and other such efforts to relieve the needy." Zacks said that at one time the Respondent had permitted "these people to come into the plant, and it just got to be unmanageable and it was too disruptive.

So [the Respondent] put this rule into effect and [it] stopped this. This rule was put into effect some time ago."

Zacks testified without contradiction that the Respondent's employees were allowed to solicit for "flower funds or other things like that." While the Respondent did not have a written rule on solicitations Zacks explained that the practice "was that solicitations for flower funds, deaths, or whatever else it may have been, were permitted on company property on non-work time. In other words, during the breaks, during the lunch hours, this was permitted and this was done, and it is still done

today." During the election campaign employees without Respondent interference engaged in union solicitations and discussions.

Zacks testified that pursuant to the above quoted written rule on solicitations United Appeal had sent speakers into the plant "to speak to groups of people and show film" and "pass out literature." While such solicitation was permitted and did occur in the plant, according to Zacks, whether permission was granted depended upon how "busy" the Respondent was "during the campaign period."

The above-quoted rule as construed and implemented by the Respondent was patently discriminatory in that it banned solicitation by nonemployee union solicitors but allowed solicitation by other nonemployees. Thus by reason of the discriminatory character of the rule, the Respondent Employer interfered with rights of employees to self-organization by promulgating the rule and, while the rule was in effect, refusing to permit nonemployee union representatives to solicit and communicate with the Respondent's employees in the same manner and under the same circumstances as was permitted other nonemployees. Such conclusion is supported by the teachings of **N.L.R.B. v. Babcock & Wilcox Co.**, 351 U.S. 105, 112:

> "It is our judgment, however, that an employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message **and if the employer's notice or order does not discriminate against the union by allowing other distribution."**

The Respondent's rule does not satisfy the Supreme Court's criteria for validity which are in the conjunctive. Thus the Respondent's rule is clearly invalid in that it discriminates against the Union by allowing other non-employee solicitation.

Third: On November 17 the Union, by Sol Stetin, Regional Director, requested permission to address the Respondent's employees by transmitting the following letter:

> "In April, 1962, the National Labor Relations Board established the principle that, under certain circumstances, a union has a right to make in-plant reply to any anti-union speech which the Employer makes to his workers.
>
> This right comes into play if the Employer has prohibited pro-union talk or solicitation among the workers, and if he or his agents make anti-union speeches to the workers and if the Union requests equal time.
>
> If your practices meet the first two conditions set out above, we request that we be given an opportunity to reply to any captive audience speech or speeches you make. The actual mechanics should be resolved by discussion. However, you must give us fair advance notice so that we can prepare ourselves so we can make an adequate reply; we would not have a meaningful right if we were given just 24 hours to prepare a reply to a speech you had spent two weeks preparing.

If you ignore this NLRB ruling and deny us the right to reply, and if we lose the election as a result of this conduct, we will decide to file objections with the NLRB. This would probably result in the election being quickly set aside and a new one being run at the appropriate time. You should keep this matter in mind, if you are considering violating the law on this point.

In addition to the NLRB rule discussion above, there is another 'right to communicate' which I believe our Union has under the law and the circumstances of this campaign. I believe that, regardless of the no-solicitation situation, our union has the right to make an in-plant reply to any captive audience speech you or your agents may choose to give. We therefore ask you to work out arrangements for a reply if you choose to give such speeches. Of course, if we are not given the right to reply, we may follow the objection procedure outlined above."

The complaint raises the question whether, by refusing the Union's requests, the Respondent violated Section 8(a)(1) of the Act in that the Union was thereby denied the opportunity "to redress the imbalance created by Respondent's action in delivering coercive speeches to its employees against the [Union] while it maintained in effect its unlawful no-solicitation rules."

As a guide to the answer to this question the following language of the Board is germane:

> "The Respondent's utilization of company time and premises to propagandize against the Unions must be viewed against the background of its **unlawful circumscription of its employees' union activity.**" Montgomery Ward & Co., Inc., 145 NLRB 846, 848, affirmed Montgomery Ward & Co., Inc., 330 F.2d 889 (C. A. 6). (Emphasis supplied.)

and "absent unusual circumstances" an employer does not have to accede to a union's request to give the union an equal opportunity to address the employer's employees in an employee audience convened on the employer's time and property. **Livingston Shirt Corporation,** 107 NLRB 400, 405.

In the present case during the preelection campaign the Respondent addressed employees in small groups assembled in approximately 50 meetings held on company time and property, time for which was paid by the Repondent. The Respondent's remarks at such company time and property meetings were antiunion, coercive in character and an infringement upon the employees' rights guaranteed under Section 7 of the Act. Moreover, while the Respondent's discriminatory solicitation rule banned nonemployee union solicitors from the Respondent's premises, the rule permitted others access to its premises for solicitation. The rule was so applied when the Union was denied permission to address the Respondent's employees during working hours on company property. As in the **Montgomery Ward Co., Inc.,** case the Respondent's "unlawful no-solicitation rule, coupled with its own use of company time and property to impress its anti-union propaganda on employees 'created a glaring imbalance in

organizational communication' that justified the Union's request to address employees under the same circumstances as had Respondent."

The imbalance thus created gave rise to the Union's right of equal opportunity to address the Respondent's employees in an employer time and property audience. Either to have denied the Union the opportunity to have addressed employees, under the same or similar circumstances as did the Respondent or to have denied the Union the opportunity to solicit in the same manner and under the same circumstances as was permitted other nonemployees interfered with freedom of communication essential to employees' rights of self-organization guaranteed by Section 7 of the Act. Indeed the one avenue of employee persuasion (the company time and property audience) which was least likely to have been blocked by lack of employee receptiveness, distractions, inertia, subtle apprehensions and genuine fear of employer reprisals was closed to the Union. Moreover, a detour to the traditional media of union communication (see **Livingston Shirt Corporation, supra**), under the unusual circumstances of the present case did not offset the competitive advantage flowing to the Respondent from its use of the time and company property audience. The competitive advantage flowing from the company time and property audience is self-evident and is acknowledged both by the Unions' constant struggle to gain participation therein and the employers' continued strong desire to retain their exclusive use. See **General Electric Co.**, 156 NLRB No. 112. It seems apparent that the empathy which results from the utilization of group psychology implicit in the company time and property audience is usually less attainable through other media normally utilized for the communica-

tion of preelection campaign propaganda. By refusing to permit the Union upon request to address the Respondent's employees convened in an audience on company time and property in like manner as did the Respondent during the preelection campaign, the Respondent violated Section 8(a)(1) of the Act.[7]

## IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in section III, above, occurring in connection with its operations set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. The remedy

It having been found that the Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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[7]The Respondent recites at p. 33 of its brief to the Trial Examiner: "However, it is also clear that if an employer had in effect an invalid no-solicitation rule, that his refusal to grant a Union's request for equal opportunity is in fact a violation of the Act. Bon-Wit Teller, 28 LRRM 1247 (NLRB 1961); May Department Stores Co., 49 LRRM 1862 (NLRB 1962), reversed, 53 LRRM 2172 (6th Cir. 1963). Therefore, it appears that the key to whether or not such a refusal is unlawful is directly connected to the validity or invalidity of the employers' no solicitation rule."

At the commencement of the hearing the Respondent "offered to enter into a settlement agreement" which was apparently satisfactory to the General Counsel.[8] Counsel for the Charging Party objected to the Settlement Agreement "for the primary reason that it does not offer an adequate remedy for the violations which have been committed by the Company * * *."[9] The Respondent offered the Settlement Agreement as an exhibit and it was admitted. The General Counsel presented his proof in support of the complaints and rested. The Charging Party advised that it had "nothing additional" and rested. At this point the Trial Examiner was disposed to submit the Settlement Agreement to the Board with a recommendation for approval; however, the Respondent withdrew the offer of settlement.[10] Whereupon the hearing continued until all the parties had rested.

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[8]The counsel for the General Counsel said, "That should the Charging Party be willing to execute the Settlement Agreement, that the Regional Office was prepared or is prepared to approve it priorly.

"This was the situation prior to the opening of the hearing. The Settlement Agreement was drafted by me during the negotiations with Mr. Greene [the Respondent's Counsel] by telephone several days before the hearing opened.

"It was done at that time on the basis that the Charging Party would become a party to it. To that extent, the settlement is acceptable.

"Certainly, the position of the General Counsel now is that since the Charging Party will not become a party to it and since complaint has been issued, it is not acceptable as a matter of policy."

[9]The Trial Examiner received no briefs from the General Counsel or the Charging Party. Thus it would appear that the Charging Party, after a review of the Record, has abandoned its claim that the Settlement Agreement does not "offer an adequate remedy." In any event the Trial Examiner is left in the dark as to what may be the present position of the Charging Party.

[10] "TRIAL EXAMINER: 'I take it, your position is, if the Trial Examiner, in view of the case, should be of the opinion that the policy of the Act would be effectuated by the recommending of settlement for approval to the Board, that in that event you would not participate in the settlement, if the Board approves?

MR. GREENE: 'That is correct.'"

Upon a review of the entire record and in view of the Trial Examiner's findings and conclusions drawn herein, it is the opinion of the Trial Examiner that the policies of the Act as contemplated by Congress, under the circumstances of this case, will be sufficiently effectuated and the remedial objectives of the Act satisfied by requiring the Respondent to post the Notice[11] which was incorporated in the proposed Settlement Agreement with the imposition of an appropriate order. Since the Union is not currently engaged in an organizational campaign among the Respondent's employees[12] and has withdrawn its objections to the election[13] any additional remedies at this time would be illusory and highly speculative. In the event union organization again commences among the Respondent's employees, the recommended order herein will be an adequate protection against a repetition of the Respondent's infringement upon employees' organizational rights found herein to be unlawful.

## Conclusions of Law

1. The Union is a labor organization within the meaning of the Act.

2. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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[11]The notice was amended at the hearing to include a ban against the threat "to move or sell" or "to get out of business."

[12]International Union Representative Kennedy testified that the Union was "not now engaged in an attempt to organize the employees."

[13]By withdrawing its objections to the election and allowing the validity of the election to stand unimpaired it appears that it must be construed that the Union has conceded that "the election which the Union lost, truly expressed the employees' desires as to representation" even though unfair labor practices were committed during the critical preelection period. See *Kolpin Bros., Inc.*, 149 NLRB 1378, 1380.

3. By maintaining, distributing, enforcing and giving effect to an unlawful no-solicitation rule, by addressing unlawful interrogations to its employees, by unlawful coercive remarks made to employees assembled on company time and property, by refusing to permit the Union upon request to address the Respondent's employees on company time and property in like manner as did the Respondent, and by hindering the Board agents in investigating charges pending before the Board against it, the Respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8(a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, it is recommended that Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees in regard to their union membership, sympathies or activities.

(b) Threatening employees with more difficult working conditions, a reduction in hourly wages and getting out of business if the Textile Workers Union of America, AFL-CIO, is selected as the collective bargaining representative of its employees.

(e) Hindering the Board agents in investigating charges pending before the Board against the Respondent.

(f) In any like or similar manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act, as amended.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at their Columbus, Ohio premises copies of the notice attached hereto and marked "Appendix."[14] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by Respondent's representative, be posted by it immediately upon receipt thereof and maintained by them for 60 consecutive days thereafter in conspicuous places, includ-

[14] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

ing all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent's to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Ninth Region, in writing, within 20 days from the date of this Recommended Order, what steps the Respondent has taken to comply herewith.[15]

It is recommended that the complaint be dismissed insofar as it alleges violations of the Act other than those found in this Decision.[16]

Dated at Washington, D. C.

Lowell Goerlich
Trial Examiner

[15]In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

[16]In view of the Board's decision in *Excelsior Underwear, Inc.*, and *Saluda Knitting Co.*, 156 NLRB No. 111, and the withdrawal of the Union's objections to the election the Trial Examiner deems moot the question whether the Respondent violated Section 8(a)(1) of the Act by its refusal, upon request, to furnish the Union with a list containing the names and addresses of Respondent's unit employees on November 30, 1964.

FORM NLRB-4535A
(11-65)

APPENDIX

TXD-249-66

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

THE RECOMMENDED ORDER OF A TRIAL EXAMINER
OF THE

## NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

## NATIONAL LABOR RELATIONS ACT
(AS AMENDED)

we hereby notify our employees that:

WE WILL NOT threaten our employees with more difficult working conditions nor the reduction of their wages should they designate the TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization, as their bargaining agent.

WE WILL NOT threaten to move or sell our plant or to get out of business if our employees should designate the TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization, as their bargaining agent.

WE WILL NOT interrogate our employees in regard to their membership in, sympathy for or activities on behalf of any labor organization.

WE WILL NOT promulgate or enforce any rule which forbids our employees from soliciting on behalf of any labor organization during nonwork time in nonwork areas of our plant.

WE WILL NOT, while maintaining and enforcing an unlawful no-solicitation rule, make antiunion speeches to our employees assembled on our premises during work time without affording, upon reasonable request, a similar opportunity to the labor organization against which the speeches are directed.

WE WILL NOT advise our employees not to talk to or otherwise cooperate with agents of the National Labor Relations Board who may be investigating unfair labor practice charges filed against us.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employeees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or refrain from any or all such activities.



App. B-18

Our employees are free to become or remain members of the above-named, or any other labor organization.

R. G. BARRY CORPORATION

(Employer)

Dated..... By.....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 2023 Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202 (Tel. No. 684-3627).

## APPENDIX C

Filed Feb 19, 1969, Carl W. Reuss, Clerk

No. 18,510

**UNITED STATES COURT OF APPEALS**

**For The Sixth Circuit**

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

R. G. BARRY CORPORATION,
Respondent.

## ORDER

BEFORE: EDWARDS and COMBS, Circuit Judges, and McALLISTER, Senior Circuit Judge.

On a petition for enforcement of the order of the National Labor Relations Board in the above case, (162 N.L.R.B. No. 135, 1967), after hearing the arguments of counsel, and upon the agreement of the parties that the third and fourth paragraphs of the order be stricken; and the Court being duly advised:

Now, therefore, it is DECREED that, as amended by the omission of the two paragraphs above mentioned, the order of the Board is hereby granted enforcement.

GEORGE EDWARDS
Circuit Judge

BERT COMBS
Circuit Judge

THOMAS F. McALLISTER
Senior Circuit Judge

Counsel for Petitioner received no formal Judgment in this cause, however, counsel was informed by the Clerk of the United States Court of Appeals for the Sixth Circuit that the above Order constituted the Judgment in the case and was filed on February 19, 1969.

## APPENDIX D

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et. seq.)

29 U.S.C. § 158(a)(1):

"(a) It shall be an unfair labor practice for an employer—(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title. . . ."

29 U.S.C. § 158(c):

"The expressing of any views, argument or opinion, or the discrimination thereof, whether in written, printed, graphic or visual form shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

29 U.S.C. § 158(d):

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by

either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . . "

29 U.S.C. § 159(a):

"(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unti for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: PROVIDED, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: PROVIDED FURTHER, That the bargaining representative has been given opportunity to be present at such adjustment.

## APPENDIX E

**SUPREME COURT OF THE UNITED STATES**
**No. , October Term, 1968**

R. G. BARRY CORPORATION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

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## ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

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Upon Consideration of the application of counsel for petitioner($),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 19, 1969.

/s/ Potter Stewart
Associate Justice of the Supreme Court of the United States

Dated this 9th day of May, 1969.

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## APPENDIX F

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

**NATIONAL LABOR RELATIONS BOARD**

**Docket No. 9-CA-3404, 9-CA-3492**

IN THE MATTER OF:

R. G. BARRY CORPORATION

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

PLACE: Columbus, Ohio

DATE: May 16, 1966

PAGES: 1-160

C. S. A. REPORTING CORPORATION
Official Reporters

300 Seventh Street, S.W. Washington, D. C. 20024
393-2320

(TITLE OMITTED)

## TRANSCRIPT OF TESTIMONY

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

LOWELL GOERLICH, ESQ., Trial Examiner.

APPEARANCES:

JOHN V. BAKER, Esq., Room 2407,
Federal Office Building,
550 Main Street,
Cincinnati, Ohio 45202,
appearing on behalf of the
General Counsel.

DANIEL B. JORDAN, Esq.,

Assistant General Counsel,
99 University Place,
New York, New York
10003,
appearing on behalf of
Textile Workers Union of
America, AFL-CIO, the
Charging Party.

[2] APPEARANCES (continued):

GLENN L. GREENE, JR., Esq.,
Fowler, White, Gillen, Humkey & Trenam,
501 City National Bank Building,
Miami, Florida 33130,
appearing on behalf of R. G. Barry Corporation, the Respondent.

JAMES J. KENNEDY,
International Representative, Textile Workers Union of America, AFL-CIO,
1729 Superior Avenue,
Cleveland, Ohio 44114.

JAMES W. EDMONDS,
International Representative, Textile Workers Union of America, AFL-CIO,
1729 Superior Avenue,
Cleveland, Ohio 44114.

GORDON B. ZACKS,
President, R. G. Barry Corporation,
78 East Chestnut Street,
Columbus, Ohio.

ROBERT L. WOODRUFF,

Director of Personnel,
R. G. Barry Corporation,
78 East Chestnut Street,
Columbus, Ohio.

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[4] **PROCEEDINGS**

TRIAL EXAMINER GOERLICH: All right. The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of R. G. Barry Corporation and Textile Workers Union of America, AFL-CIO, Case No. 9-CA-3404 and Case No. 9-CA-3492.

The Trial Examiner conducting this hearing is Lowell Goerlich.

I take it that a Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases hasn't been served upon all parties.

This being the fact, I will read the Statement into the record:

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board in accordance with the provisions of the National Labor Relations Act, the Administrative Procedure Act, and the Board's Rules and Regulations.

Parties may be represented by an attorney or other representative and present evidence relative to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record.

[5] The Board will not certify any transcript other than the official transcript for use in any court litigation.

Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reported unless the Trial Examiner specifically directs off-the-record discussion.

In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing.

[6] In the event such copy is not submitted and the filing thereof has not, for good reason shown, been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions; or both, with the Trial Examiner, who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board.

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D. C., at least three days prior [7] to the expiration of the time fixed for the submission of such documents.

Notice of request for such extension of time must be served simultaneously upon all other parties and proof of such service furnished to the Trial Examiner or to the Chief Trial Examiner.

All briefs or proposed findings filed with the Trial Examiner must be submitted in triplicate and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course, the Trial Examiner will prepare and file with the Board his decision in this proceeding and will cause a copy thereof to be served upon each of the parties.

Upon filing of the said decision, the Board will enter an order transferring this case to itself and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of the exceptions to the Trial Examiner's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly [8] in Section102.46, and following Sections.

A summary of the more pertinent of these proceedings will be served upon the parties, together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce Government expenditures and promote amity in labor relations.

Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussions be-

tween the parties if adjustment appears possible and may himself suggest it.

Will counsel and other representatives for the parties please state their appearance for the record.

Counsel for the General Counsel?

MR. BAKER: John V. Baker, Cincinnati, Ohio.

TRIAL EXAMINER: For the Charging Party?

MR. JORDAN: Daniel B. Jordan, Assistant General Counsel, for the Textile Workers Union of America, AFL-CIO, 99 University Place, New York, New York.

TRIAL EXAMINER: For the Respondent.

MR. GREENE: Glenn L. Greene, Junior, from the firm of: Fowler, White, Gillen, Humkey & Trenam, 501 City National Bank Building, Miami, Florida.

TRIAL EXAMINER: Are there any other appearances?

Consistent with the suggestion to the parties before [9] the formal opening of the hearing that they have the right to propose settlement offers at any stage of the Board's proceeding, there may come a time during the hearing when settlement discussions are desired.

The Trial Examiner will be glad to grant reasonable recess for that purpose. In addition, it has been the Trial Examiner's experience that trial developments may change attitudes and make settlement possible.

Accordingly, the Trial Examiner advises you now, before he has heard any of the testimony, that no matter what facts are brought out during the hearing, he intends to offer opportunity for settlement discussions at two specific stages of the hearing:

First, upon conclusion of the General Counsel's case; and, second, upon conclusion of the hearing.

If by inadvertence the Trial Examiner overlooks the matter, if you will, please, if the parties will, call it to his attention.

The Trial Examiner invites you to bear in mind, as the hearing proceeds, that opportunities for such discussion will be available at all times upon request.

There may be occasions when the Trial Examiner will desire to ask a question of a witness during these proceedings. If such occurs, any party is free to object to to such question. Such objection shall be treated in the same [10] manner as if a party to the proceeding has asked the question.

If no objection to such question is made, objection to such question will be deemed to have been waived.

You may proceed, Mr. Baker.

MR. BAKER: Your Honor, the **Index and Description of Formal Documents** have been marked for identification as Board's Exhibits 1(a) through 1 (dd).

These documents have previously been shown to the parties.

At this time I will offer them into evidence as General Counsel's Exhibits 1(a) through 1(dd).

(The documents above-referred to were marked General Counsel's Exhibits Nos. 1(a) through 1(dd) for identification.)

TRIAL EXAMINER: Is there any objection to the receipt of General Counsel's Exhibits 1(a) through 1(dd)?

Hearing no objection, General Counsel's Exhibits 1(a) through 1(dd) are admitted into evidence.

(The documents above-referred to, heretofore marked General Counsel's Exhibits Nos. 1(a) through 1(dd), were received in evidence.)

MR. BAKER: Would you like to see a copy at this time, your Honor?

TRIAL EXAMINER: I'll examine them at recess.

* * *

[22] GORDON B. ZACKS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

TRIAL EXAMINER: Take the stand and give us your full name.

THE WITNESS: Gordon Zacks.

TRIAL EXAMINER: And your address?

THE WITNESS: 2441 Bexley Park, Columbus, Ohio.

TRIAL EXAMINER: Give us your age.

THE WITNESS: Age 33.

Q (By Mr. Baker) Mr. Zacks, are you presently the executive vice-president of the R. G. Barry Corporation?

A No, I'm not.

Q What is your position?

A I'm president of the Company.

Q President of the Company?

A Yes.

Q I believe there was an organizing campaign among your employees by the Textile Workers Union of America in the year of 1964, is that correct?

A That is correct.

Q Is it true that during that time you conducted certain meetings with the employees wherein the Union was [23] discussed.

A That is correct.

Q Where were these meetings held?

A In the employees' lunchroom on the first floor at 78 East Chestnut.

Q Were all the meetings held in that room?

A Yes, sir. Yes.

Q Is that a room that all the employees knew about?

A That is an employees' lunchroom. It was used prior to this and during this and following this as a lunchroom.

Q Is that room located near the men's restroom on that floor?

A It is bounded by the men's room, the cutting room, and carpentry shop.

Q And what is the size of the room, Mr. Zacks, approximately?

A I could give you an estimate of it. I would say it's about 20 feet by 20 feet. I would guess in that neighborhood.

Q It contained tables and chairs?

A Yes.

Q Who spoke at these meetings?

A I spoke at these meetings.

Q And were there any refreshments provided for the employees?

[24] A Yes; we had coffee and doughnuts.

Q Now, how many employees normally attended these meetings?

A Twelve, thirteen; twelve to fifteen, I would say.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. BAKER: Before I forget it, at the time you made these speeches to the employees, were you the executive vice-president?

THE WITNESS: That is correct.

Q (By Mr. Baker) Now, there were from 12 to 15 employees at each meeting, and you had several meetings?

A Yes.

Q How many meetings would you say there were? How many employees did you talk to?

A We had, roughly, 50 meetings.

Q Fifty?

A Approximately 50.

Q Fifty?

A (Nodding affirmatively.)

TRIAL EXAMINER: Mr. Baker, are you claiming that the size of the meeting had anything to do with its coercive character?

* * *

[26] MR. BAKER: Well, we are not saying that the size of the meeting, standing alone, would necessarily be a violation. It is the position of the General Counsel that that, in conjunction with its other elements, as part of it —

MR. GREENE: Let me also ask:

Are you claiming that the location of the meetings was coercive, the fact that he had them in the employees' lunchroom?

MR. BAKER: If that fact remains established, no, the location would not be. It will be our evidence, or evidence will show — at least these employees we have who attended the meeting hadn't been in the meeting before and didn't know what it was.

MR. JORDAN: I would associate myself with the remarks of Mr. Baker.

MR. BAKER: You disassociate yourself?

MR. JORDAN: No; I associate myself with them.

TRIAL EXAMINER: Go ahead, Mr. Baker.

Q (By Mr. Baker) Now, so there were some 50 meetings?

A Approximately, yes.

Q Did you make a similar speech at each meeting?

A I made the same speech at each meeting.

Q Was the speech written out?

A It was.

Q Did you in any wise deviate or depart from the written [27] text of the speech?

A I did not.

Q Isn't it true that following each meeting there were question-and-answer periods?

A That is correct.

Q At that point you had questions asked?

A That is correct.

Q In regard to the Union?

A In some instances, in regard to the Union.

Q Now, at those points, you had no written text?

A That is correct.

Q So to that extent, you did deviate?

A Yes.

Q I'll show you what has been marked General Counsel's Exhibit 2 for identification and ask if that is a copy of the speech that you used?

A Yes, sir, yes, that is the speech.

Q All right. Now, when were these meetings held, in what period of time?

A To the best of my recollection, during the month of November, 1964.

Q And they extended through almost the entire month?

A Yes.

Q Then there had to be occasions, at least on some days, when there was more than one meeting, to get them all in, [28] more than one?

A Yes.

TRIAL EXAMINER: Did you talk to any group of employees more than once?

THE WITNESS: No.

TRIAL EXAMINER: Generally, how many employees did you address in all?

THE WITNESS: Roughly, 500, sir.

TRIAL EXAMINER: You conducted, roughly, 50 meetings?

THE WITNESS: Approximately.

Q (By Mr. Baker) Now, how were the employees advised of the meetings?

A They were advised by their supervisor.

Q Was there a schedule prepared as to which employees would go to which meetings?

A No. We basically selected our people based on convenience to production, and this was our busiest time of the year. We had to select people so that it would not interfere with, or would have the minimum interference with, production flow.

So because of the unknown absenteeism problem, it was impossible for us to prepare a schedule in advance.

We had to work basically the day before each group meeting and we selected the people we wanted, and each day we had to make adjustments because of the absenteeism.

[29] TRIAL EXAMINER: Did you conduct more than one a day?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: What was the maximum number for each, per one day?

THE WITNESS: The maximum number would have been four; and the normal number was, I think, two.

Q (By Mr. Baker) These employees would come from various departments; one group might be made up of several departments?

A That is correct.

Q How were the employees told that they were to go to the meeting?

A They were invited to attend the meeting.

Q How were they invited to attend?

A The supervisors would ask them if they would like to attend the meeting and told them that I was speaking and giving the Company position with regards to the Union, and it was an invitation, not an order.

Q All right. Now, you say it was an invitation rather than an order.

Did you hear the supervisors, in all instances, invite the employees?

A No, sir, I did not.

Q Then you really don't know what the supervisors said?

[30] A That is correct.

Q Did you give any instructions to the supervisors on how to invite the employees to the meeting?

A Yes.

Q What were your instructions?

A My instructions to the supervisors were that this was to be an invitation, a voluntary attendance, not a forced or ordered attendance, and under no circumstances were they to direct an employee to attend but merely to extend an invitation.

I relayed this information to our supervisors on at least three and possibly four different occasions. I didn't listen to every supervisor, so obviously I don't know if they followed the suggestions.

Q You don't know?

A No.

Q Isn't it true that they were escorted to the meetings by the supervisors?

A In some instances, yes, but not in all instances.

Q But in all instances they were escorted by someone?

A I can't say that either, but I would say in most instances.

Q Someone brought the group down to the elevator and down to the meeting room?

A Yes.

[31] TRIAL EXAMINER: What was the meeting room ordinarily used for?

THE WITNESS: It was the employees' lunchroom, sir.

TRIAL EXAMINER: Was it large or small?

THE WITNESS: I'd say, I think it's about 20 feet by about 20 feet.

TRIAL EXAMINER: Okay.

Q (By Mr. Baker) Were these tables and chairs for the purpose of using it as a lunchroom —

A Yes.

Q —before the meetings were being conducted?

A Oh, yes. There were vending machines, coke machines, candy machines, cigaret machines, and et cetera.

Q Is it not a fact that after the employees were in the meeting room, then you told them that they could leave if they wanted to?

A I did. I repeated again to every group from my prepared text that they would not be required to stay. They were free to leave or to stay, and any time in the course of my remarks they were free to leave if they chose to leave.

Q But isn't it also true that Miss or Mrs. Bessie —

A Scott.

Q — Scott. She has what position in the Company, by the way?

[32] A At that time, she was a vice-president and plant manager.

Q Is it not a fact that she recorded the names of all the employees as they came into the meeting, she made a list of the people attending?

A Yes.

Q In full view of the employees?

A Yes, I would think so.

Q Isn't it also true that you said, or you at least departed from your speech to the extent that you said to certain employees, "If you are for the Union, why are you staying?"

A No, that is not true.

And let me say, sir, that when you refer to my remarks, at no time did I depart from my planned remarks, from the written speech, except during the question and answer period when questions were asked of me regarding material in the contents of the speech which either I answered or, in some instances, other employees answered.

Q But you did have a blackboard present?

A I did.

Q You used the blackboard in almost all the meetings?

A In almost all of them, yes, sir.

Q Wherein you explained the Company's bonus system?

A That is correct.

[33] Q There is nothing about the bonus system in the speech?

A That is correct.

Q Then at least when you were discussing the bonus you departed from the prepared text?

A When the bonus came up, I departed from the planned text, in the question and answer period.

The bonus did not come up in every group meeting; it was not relevant in every group meeting.

TRIAL EXAMINER: Mr. Baker, do you claim anything coercive in the speech?

MR. BAKER: Yes, we feel the speech is coercive.

TRIAL EXAMINER: Do you feel that it is necessary to examine the speech as a result, as a whole, to come to that conclusion?

Or do you feel that certain parts of it are coercive?

MR. BAKER: We think that certain parts of that address, as worded, are coercive; but also the speech considered in the totality of the speech, along with other alleged unfair labor practices, contain a violation of the 8(a) (1).

MR. GREENE: We would take the position that the speech speaks for itself, and we would like to have it introduced by the General Counsel.

• • •

[35 • • •] TRIAL EXAMINER: All right.

Q (By Mr. Baker) Now, it is my understanding that there was present, other than the coffee and the doughnuts, other material; is that correct?

A Yes, sir.

Q One of which was the America's Textile Reporter, dealing with "The Henderson Story"?

A Yes, sir.

Q This was passed out to each employee, is that correct?

MR. GREENE: I want to object.

This material was referred to in the objections. Those objections were withdrawn.

There is no mention in the complaint at any place that any document, that anything other than the speech and other than certain statements in the speech were coercive.

Therefore, we think they are not entitled to introduce any of these documents or even to examine Mr. Zacks on it.

TRIAL EXAMINER: What is the relevance of it, Mr. Baker?

MR. BAKER: In this area, your Honor, we have to consider all of the contents, all of the literature; certainly, that this document is referred to in the speech.

It is my intention to offer the speech. I think the [36] document compliments or is a necessary part of that speech.

TRIAL EXAMINER: Was there a reference made to the document in the speech?

MR. BAKER: Yes.

TRIAL EXAMINER: Well, I think it would be competent, then.

MR. BAKER: Then I have marked that document for identification General Counsel's Exhibit No. 3.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for identification.)

TRIAL EXAMINER: Do you claim that document is coercive in and of itself?

MR. BAKER: I'm not sure. I think perhaps the Board has ruled on this document at one time, on the document or a document similar to it.

I thing it should be put before the Board and certainly considered by the Trial Examiner.

I hate to keep referring to it as within the total context of all of Respondent's conduct.

MR. GREENE: Mr. Trial Examiner, on this "total context" business, there is no allegation in the complaint

again. There was such an allegation in the objections on the election.

Now, all these objections have been withdrawn, and Respondent has prepared its case with that in mind and [37] with the limited allegations as contained in the complaint.

Now, we would like to have a ruling at this point, as best as we can get one. I will be glad to make individual objections as Mr. Baker proceeds, but I think it would be well to get a ruling at this point on just how far he is going to be able to go in this "total context" idea he's got.

TRIAL EXAMINER: I will allow General Counsel's Exhibit 3 to be received in that it has been referred to in General Counsel's Exhibit 2.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3, was received in evidence.)

TRIAL EXAMINER: Go ahead, Mr. Baker.

Q (By Mr. Baker) Now, after these employees — and I believe you used the term of, or although you say they were attending voluntarily, you do refer to this as pulling them off the job, do you not, and pulling them in, in a statement that you gave to the Labor Board?

A (No response.)

Q You said, "If we had pulled 10 or 12 people from any given work area, we would have crippled the pro-

duction of that line and would have been unable to sustain a smooth production flow."

Do you recall that statement?

You did use the word "pull," did you not?

[38] A Yes.

TRIAL EXAMINER: What was your reason for having such small audiences?

THE WITNESS: Again, its purpose — the purpose for the small groups and for the manner in which the people were selected was that period of time, November, happens to be the busiest month of our year, and it's in order to keep our production moving that we wanted to have the minimum disruption to our production flow.

So we tried to keep the units small and we tried to bring the people from different work areas so there would be no crippling effeet in any one area.

TRIAL EXAMINER: Were any other representatives of management present at these meetings other than yourself?

THE WITNESS: Yes.

TRIAL EXAMINER: Who? Who was present?

THE WITNESS: At some of the meetings, Mrs. Scott, who was vice-president and plant manager of 78.

At some, Mr. Pickrell, who was plant manager at 366, and that's about it.

None of them were together at the same meeting, but at one or the other meetings. There were other meetings where I was the only one there.

MR. BAKER: As you recall, your Honor, the witness testified that Miss Scott made lists, took a roll, made [39] a list of each employee attending.

TRIAL EXAMINER: I would have assumed that they knew the employees. They should know who he was. He was released from his job.

I don't attach much significance to that fact.

MR. BAKER: Your Honor, we do have 500 people.

TRIAL EXAMINER: Each supervisor, as I understand it, excused his employee and he obviously would know which one he excused.

Go ahead.

Q (By Mr. Baker) Now, is it not also true that following each meeting you expected your supervisor to appraise the effect that the meeting had on the employees?

A No, not in those words, but I did expect the supervisor to report to me whether or not in the group meetings we were dealing with the issues and answering questions that were on the minds of the people.

Q That if the supervisors had found out through one way or another that this was the issue or that was the issue, you wanted that pointed out to you?

A That is correct.

Q You wanted the supervisor to find out from the employee, after the employee had attended the meeting, whether or not you had dealt with the problems bothering a particular employee?

[40] A I instructed the employees' supervisors to make themselves available and be accessible to the people, whether they came back from the meeting today or whether they hadn't been to the meeting or whether they came back a month ago from the meeting or 20 days ago, so they would be available to answer questions.

If they didn't know the answers to the questions, I requested them to bring them to me so we could get an answer.

Q You did this to be able to "evaluate the impact of the meeting on our people," using your words?

A That is correct.

Q You did expect that.

Now, following these meetings, it is not a fact that you received a communication from a Mr. Sol Stetin, the Regional Director of the Textile Workers Union of America, wherein he requested that he be permitted or that his Union be permitted an equal opportunity to address the employees in a similar manner?

A Yes, sir.

Q I will show you what has been marked General Counsel's Exhibit 4 for identification and ask if that is a true or reasonable copy of the letter which you received?

TRIAL EXAMINER: Mr. Baker, I suggest that as you go ahead you offer your exhibits.

[41] MR. BAKER: All right.

TRIAL EXAMINER: One at a time, so that we can discuss them without having to repeat, in the event they are all offered at the same time.

MR. BAKER: I would like at this time to offer General Counsel's Exhibit marked 2 for identification, which is a copy of the speech previously identified by Mr. Zacks.

TRIAL EXAMINER: Is there any objection to that?

MR. GREENE: No, no objection.

TRIAL EXAMINER: Very well. General Counsel's Exhibit 2 is admitted.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 2, was received in evidence.)

TRIAL EXAMINER: General Counsel's Exhibit 3, I don't know whether it has been offered.

MR. BAKER: General Counsel's Exhibit 3, **America's Textile Reporter,** is a magazine with a cover story entitled "The Henderson Story."

I would like to offer it now in evidence.

TRIAL EXAMINER: Is there any specific portion of that exhibit which refers to the speech?

MR. BAKER: Your Honor, the entire magazine or the edition deals with the "Henderson Story", which is the subject dealt with, in part, in the speech.

[42] There is no particular part itself; it's the entire magazine. There were references throughout the speech.

TRIAL EXAMINER: Mr. Zacks, is that magazine passed out to all employees?

THE WITNESS: Yes, sir, all, yes.

TRIAL EXAMINER: All right. We'll admit it, General Counsel's Exhibit 3.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3, was received in evidence.)

TRIAL EXAMINER: What about Exhibit 4?

MR. BAKER: General Counsel's Exhibit 4 is a letter addressed to Mr. Gordon Zacks, at that time executive vice-president of the R. G. Bary Corporation, dated November 17, 1964, and signed by Mr. Sol Stetin. Regional Director of the Textile Workers Union of America, wherein he requested equal opportunity to address the employees.

(The document above-referred to, was marked General Counsel's Exhibit No. 4 for identification.)

TRIAL EXAMINER: Are you offering that exhibit, Exhibit No. 4?

Any objection?

MR. GREENE: No objection.

* * *

[46] On page 11, beginning with the underlined language:

"And leaving your work station," and ending with the underlined words: "The loss of your job."

And on page 19 of the same document, beginning with the underlined words: "Is the only solicitation," and ending with the words: "By the Personnel Department," which are also underlined.

These are the portions which the General Counsel contends is in violation of Section 8 (a) (1) and is constituting, as written herein, a no-solicitation rule, which would be too broad.

TRIAL EXAMINER: Is there an issue that the General Counsel's Exhibit 6 was not in existence during the critical period?

MR. GREENE: No, no issue as to that.

TRIAL EXAMINER: I take it, you claim the matter referred to by Mr. Baker is not relevant to the Act?

MR. GREENE: Right, and not only on the face but in its application.

TRIAL EXAMINER: Very well.

Q (By Mr. Baker) Now, I show you, Mr. Zacks, what has been marked for identification General Counsel's Exhibit 7 and ask if that is a copy of the notice posted on your bulletin board on or about the date indicated thereon, which is what?

A February 8.

[47] Q February 8, 1965?

A Yes.

(The document above-referred to was marked General Counsel's Exhibit No. 7 for identification.)

MR. BAKER: At this time, your Honor, I would offer General Counsel's Exhibit 7 into evidence, which goes to the one single allegation in Case No. 9-CA-3492.

TRIAL EXAMINER: What is that allegation there?

MR. BAKER: That "On or about February 8, 1965, Respondent, at its plant in Columbus, Ohio," et cetera — "In posting or causing to be posted a notice to employees advising them, in effect, not to talk to or otherwise cooperate with agents of the Board in regard to the latter's investigation of unfair labor practice charges filed by the Charging Party herein then pending against Respondent in Case No. 9-CA-3404, urging them to have Respondent's attorney present during any interviews by agents of the

Board, and instructing them not to sign any statements for any agents of the Board, thereby impeding the authority of the Board to investigate charges filed under the Act."

TRIAL EXAMINER: Any objection to General Counsel's Exhibit No. 7?

MR. GREENE: No objection.

TRIAL EXAMINER: It is received.

[48]

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 7, was received in evidence.)

TRIAL EXAMINER: That is only 7 that you have to support that allegation?

MR. BAKER: Yes, sir.

It is my understanding, your Honor, that this is the document. As an alleged violation of Section 8 (a) (1), it does not depend on the full effect that the document had on the employees, which, I might add, in this case, turned out to be adverse to the Board's agents, but on the effect that it would have on a reasonable person reading it, as even any other 8 (a) (1) coercive statement.

TRIAL EXAMINER: I take it you have adequate evidence to support your position that the Notice is in violation of the Act?

MR. BAKER: I have, your Honor, supporting the theory that to impede the process of the Board is bad, not that this Notice is bad as such.

Q (By Mr. Baker) Now, when you were discussing "The Henderson Story" in this speech, isn't it true that you discussed the Westinghouse strike in Columbus, Ohio, the most recent strike, with certain groups of the employees?

A With certain groups of employees?

In the question and answer period, it may very well have come up.

[49] Q You did make reference?

Isn't it true that when you were discussing "The Henderson Story," you said it was far away but it can happen here, it did happen here at the Westinghouse plant, and then go into the strike with them?

A No, that is not true.

The only way the Westinghouse story would come up would be in the questions and answers

Q Then you did discuss it?

A Sometimes. Sometimes I may have answered a question on it, but other times, other people in the meetings may have brought up comments about it.

Q Brought up the subject?

A Brought up comments about it. Comments about it.

Q Now, is it not a fact that your bulletin boards are locked cases with glass fronts, inaccessible to anyone but members of the management who have a key?

A Our news centers are such, yes.

Q That is where the notices are normally posted?

A Yes, sir.

Q Where you post your signs of the departments and the other notices issued by the Company?

A True, yes.

* * *

[63] * * * TRIAL EXAMINER: Anything further of this witness, Mr. Baker?

MR. BAKER: I believe not, your Honor.

TRIAL EXAMINER: Does the Charging Party have any questions?

MR. JORDAN: Yes.

CROSS-EXAMINATION

Q (By Mr. Jordan) When you held your meetings, you stated that you had perhaps 50 meetings with from 12 to 15 persons at each.

You also stated that there was a record kept of the names of the persons who attended, isn't that true?

MR. GREENE: As to that, the court reporter can —

A Yes, sir.

Q Then you did compare or cause someone to compare the names of those who did attend with a roster of employees?

A No.

MR. GREENE: I want to object.

TRIAL EXAMINER: Well, he answered. He answered the question.

Go ahead.

MR. GREENE: Go ahead.

Q (By Mr. Jordan) You did not do so?

A No.

* * *

[65] MR. GREENE: Objection. I want to get an objection in here.

Go ahead and answer.

THE WITNESS: No.

Q (By Mr. Jordan) Were there, in fact, any people who were not invited because they were known to be Union adherents?

MR. GREENE: Object.

TRIAL EXAMINER: Go ahead and answer the question.

MR. GREENE: Mr. Trial Examiner, could I get a statement for the basis as to why this is admissible?

TRIAL EXAMINER: I am allowing it, subject to developments.

MR. GREENE: Answer the question.

THE WITNESS: Our intention was to have everyone in attendance at these meetings. At the last minute, we had to make a choice. We did not have enough time to complete the group meetings. There were individuals who had not attended them.

We decided, instead of completing the group meetings, to have a general meeting, a mass general meeting, and at that general meeting we found the time required to set that up preempted the last two scheduled meetings that we had so there were some people that did not attend any group meeings; and we had to announce at the general meeting [66] this was so, but we ran out of time.

We tried to run as many as we could, but we didn't have time; we just didn't have time.

Q (By Mr. Jordan) Were you present on any occasion when any of your supervisors actually did call people to these meetings?

In other words, were you on the floor to observe it?
A No, sir.

MR. JORDAN: No further questions.

MR. GREENE: Step down, Mr. Zacks.

(Witness excused.)

— — —.

TRIAL EXAMINER: All right. Next witness, Mr. Baker.

MR. BAKER: I'll see who I've got left.

TRIAL EXAMINER: Let me ask you this before you call your next witness: Have you covered everything except the allegations on the interrogations?

You are going to call some people?

MR. BAKER: About the speeches, yes.

TRIAL EXAMINER: About the speeches.

If they're available, would you call them next.

MR. BAKER: All right.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

[67] PHYLLIS SWANN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

TRIAL EXAMINER: Will you state your name, please?

THE WITNESS: Phyllis Swann.

TRIAL EXAMINER: What is your address?

THE WITNESS: 78 Hartford Avenue

TRIAL EXAMINER: If you speak up like that, we won't have a bit of trouble hearing you.

THE WITNESS: Okay.

MR. BAKER: It's hard to hear in here.

Q (By Mr. Baker) Now, you are at present employed by the R. G. Barry Corporation?

A Yes, I am.

Q You're on sick leave from an automobile accident?

A Yes, that's correct.

Q Now, were you working there at the time of the Union campaign in 1964?

A Yes, I was.

Q Who was your supervisor at that time?

A Bea Hyder.

Q Miss Swann, would you state whether or not you attended any meeting at the plant wherein Mr. Zacks [68] discussed the Union?

A Yes.

How many such meetings did you attend?

A Yes.

Q How many? I say.
A One.

Q Where was that meeting held?
A Well, it was held downstairs, on the first floor, off from the men's restroom.

Q What room was that, do you know?
A No.

Q Had you ever been there before?
A No.

Q Now, how many people attended the meeting with you?
A I'd say about 10, for sure I wouldn't know.

Q And who told you about the meeting?
A Bea, my supervisor.

Q What exactly did she tell you?
A She come back to my machine and she said, "You're to go to the meeting at 9:00 or 10:00."

And she come back later and she says, "No, you go up at 1:00."

Q You go at 1:00?
A Yes. I think it was I went at 1:00 o'clock in that afternoon.

[69] Q Was it all she said to you?
A Yes. She said, just said, "You go to the meeting."

TRIAL EXAMINER: Did she tell you where it was?

THE WITNESS: No.

TRIAL EXAMINER: How did you find out where the meeting was?

THE WITNESS: My floor girl, that's Garnett Harden, she took us to the elevator and took us down to the first floor. Then we know our way.

TRIAL EXAMINER: All right.

Q (By Mr. Baker) Now, who conducted the meeting? Who was in charge of the meeting? Who did the talking?

A Mr. Zacks and Bessie.

Q That's Bessie Scott?

A Yes.

Q What did Bessie do in the beginning of the meeting, if anything, if you recall?

A She offered us a cup of coffee and doughnuts.

Q Anything else?

A No.

Q Now, do you recall whether or not she made any notes?

A Well, she made notes during —

Q During what?

A While he was talking.

Q Tell us what Mr. Zacks said, that you recall, in the [70] meeting.

TRIAL EXAMINER: Excuse me.

Did you observe what she was putting down in her notes?

THE WITNESS: No, I didn't. She sat across the table from me.

TRIAL EXAMINER: All right. Go ahead and answer.

THE WITNESS: What was the question?

Q (By Mr. Baker) Will you tell us what Mr. Zacks said, everything that you recall he said during the meeting?

MR. GREENE: I'm going to object.

TRIAL EXAMINER: I'll sustain the objection.

MR. BAKER: On what basis, if I may?

TRIAL EXAMINER: On the ground that the best evidence is the speech.

There has been no evidence introduced that Mr. Zacks varied from the speech, which is in evidence. If you can prove that he did, then I will allow some evidence as to what he said.

MR. BAKER: All right.

Q (By Mr. Baker) Did Mr. Zacks talk to you at the meeting?

A Yes, he did.

Q How did he talk to you?

A Well, there was a paper in front of us.

[71] Q In front of you?

A Yes. There was a book.

When we first went down, we stated our names, our occupations, where we worked at.

Q All right.

A Then there was a piece of paper and a book laying in front of us.

Q I'll show you General Counsel's Exhibit 3 and ask if this is a copy of the book you are talking about?

A Yes.

Q Then what happened next?

TRIAL EXAMINER: Excuse me.

You said there was a piece of paper in front of you, too?

A Yeah, there was a note, a letter saying where the Union had wrote to them and asked for recognition, not an election.

Q I'll show you the letter here and ask if that looks like the letter that was before you?

A Yes, same thing.

TRIAL EXAMINER: General Counsel's Exhibit 9?

(The document, above-referred to, was marked General Counsel's Exhibit No. 9 for identification.)

MR. BAKER: It is marked for identification General Counsel's Exhibit No. 9, and there are pen marks on there, [72] your Honor, which are not a part of the original document.

MR. GREENE: If I may see that.

MR, BAKER: Yes.

TRIAL EXAMINER: Very well, it may be ignored.

MR. GREENE: Thank you.

TRIAL EXAMINER: You're offering the exhibit?

MR. BAKER: I offer General Counsel's Exhibit No. 9.

TRIAL EXAMINER: Any objection?

MR. GREENE: No objection.

TRIAL EXAMINER: General Counsel's Exhibit No. 9 will be received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 9, was received in evidence.)

Q (By Mr. Baker) Now, after they took your names and addresses and occupations, then what happened?

A Well, like I said, these books was in front of us. He told us to glance through them.

Q You looked through the books before he started talking?

A No. No. After he started talking. Of course, he was very nice about it. He told us that we knew what the meeting was about and that if anyone wanted to get up and leave, they could.

Q Had you been told prior to that time that you didn't [73] have to go to the meeting?

A No.

Q This was the first?

A Yes.

Q Did you want to stay?

A Well, I wanted to hear what they had to say.

Q All right.

Now, Mr. Zacks made a speech; is that correct?

A Uh huh.

Q How did he make that speech?

A Well, he said that he was taking it from a note that his lawyer had approved and the court approved or the National Labor Board had approved.

Q You say a notice?

A Well, a book, a notebook.

Q In front of him?
A Yeah.

Q Could you tell whether or not he was reading the speech word for word, or did he read it, to your observation?

A I don't know. I couldn't say because he did glance at the book, you know, a lot of times.

Q He'd look down at it?

A Yeah, but I don't know what was in it. I couldn't say.

[74] Q A lot of the time he was looking up?

A Yeah.

Q Which was he doing the most, looking down or looking up?

A Well, I don't know, really. I couldn't say for sure.

Q But he would look down and look up?

A Yeah.

Q Did you notice that he was reading a speech?

A No.

Q Do you know if he was? If he was reading a speech?

A No.

MR. GREENE: I move to strike. Object.

TRIAL EXAMINER: After he read it a few times, I assume he would know it pretty well.

I'll overrule the objection.

Q (By Mr. Baker) When did you attend this meeting? Do you recall when it was?

A November 17.

Q Did you know if there had been meetings before that?

A Yes.

Q Now, can you tell us what you recall that Mr. Zacks said in his speech?

MR. GREENE: Object.

TRIAL EXAMINER: Objection sustained.

MR. BAKER: Your Honor, I think, under the [75] circumstances, proving without or beyond a shadow of a doubt that there was no deviation from this speech is a little out of the question.

I think the important thing is what this witness remembers what was said in the speech.

TRIAL EXAMINER: I don't think that has any relevance whatsoever, what she remembers what she remembers at this date. We have evidence —

THE WITNESS: It's not what I remember; it's what I know.

TRIAL EXAMINER: All right, what you know.

MR. BAKER: Sorry.

TRIAL EXAMINER: If you have specific testimony in which you allege a deviation or deviations from the text, I might permit the questions in that regard.

Or do you have any, some testimony which would relate to statements made by Mr. Zacks after he completed his speech? I'll permit that.

I'll permit any evidence, testimony, that would vary the speech which you have put into evidence.

MR. JORDAN: You won't permit any at all, you won't permit it unless it is shown that there was evidence that things were said at the speech that really did deviate?

TRIAL EXAMINER: That there were statements which would indicate a deviation from the speech, I'll permit that.

[76] MR. BAKER: All right.

Q (By Mr. Baker) Was anything said about bargaining in that speech that you recall?

A Yes.

MR. GREENE: Object.

THE WITNESS: Oh, yes.

MR. GREENE: Objection.

TRIAL EXAMINER: I'll sustain it. That is certainly a leading question.

MR. BAKER: It is, certainly, your Honor. You limited me to things, about things that deviated.

This witness knows what she recalls about that speech. If there is another way I can limit her testimony to that, any portion, I will.

TRIAL EXAMINER: Are you going —

MR. BAKER: I don't want to lead her.

TRIAL EXAMINER: Are you going to interrogate her on subjects that do not appear in the speech?

MR. BAKER: Yes, sir.

TRIAL EXAMINER: Go ahead. I'll permit that.

Q (By Mr. Baker) What did he say about bargaining?

MR. GREENE: Bargaining is dealt with at length in the speech.

TRIAL EXAMINER: Very well. If that is true, I will sustain the objection.

[77] MR. BAKER: This is testimony about a deviation from that speech; I'm not saying there was no mention of it in the speech. You are asking me for testimony.

TRIAL EXAMINER: I'm supposed to hear the testimony in order to make the decision as to whether or not it's a deviation from the speech.

Answer the question.

THE WITNESS: I forgot it now.

Q (By Mr. Baker) What if anything was said about bargaining?

A Yes, he did.

Q What did he say?

A He said if the Union got in that he would start bargaining from a dollar and a quarter and go up; that's with no holidays, that's with no sick pay, and things.

Q Now, did you get a holiday pay without the Union?

A Yes.

Q Did you get sick pay?

A Yes.

Q Did you make more than — what was your wages?

A At what time?

Q At that time, when he talked about the dollar and a quarter.

A My wages was at least two, two or two and a half.

Q An hour?

* * *

[80] * * * TRIAL EXAMINER: Mr. Jordan, I will do the best I can to pursue the proper decorum so the witnesses will be able to state their answers and be heard.

Let's proceed.

Q (By Mr. Baker) After he completed his speech, what then happened, if anything?

A You mean just completed it?

Q When he completed it. Did he complete it while you were there?

A Yeah.

Q What happened, if anything, if you recall?

A Well, he asked if anyone had any questions.

Q Did anyone have any questions?

A Yeah.

Q Did you have one?

A Yes.

Q What was your question?

A I asked him if the Union didn't get in, would he cut our wages back to a dollar and a quarter.

Q If the Union did not get in?

A Yes.

Q What did he say to that?

A He says no, but said, "Would you sign a paper saying you wouldn't?"

* * *

[87] A Yes.

Q Was she there?

A I can't say 'cause I don't know.

Q You answered a question put to you by Mr. Baker concerning some statements Mr. Zacks made about bargaining; is that correct?

A Yes, sir.

Q Tell us again what Mr. Zacks said in regard to that particular subject?

A Which one?

Q The bargaining that you testified about. All right.

A About the "sweetheart" contract?

Q No. About the bargaining.

A About where he could take $2500—

Q No. I'm talking about the bargaining.

Mr. Baker asked you the question on what Mr. Zacks said about the bargaining.

You gave an answer.

A You give me an answer, what one are we talking about? Which one?

Q I'm talking about the bargaining.

A Which one? There's two of them.

Q You must remember. Two what?

A Bargaining. The "sweetheart" contract, where it would be us paying in—

[88] Q The other one.

A Which one?

Q You said two. Not the sweetheart contract, but the other one.

A I don't remember.

Q You don't remember what he said?

A No.

Q How long has it been?

A A year and a half.

Q It's just too hard for you to remember, just exactly what he said in regard to the bargaining?

A No. I remember, but I refuse to answer.

Q You refuse?

A Yes, I refuse to answer.

MR. BAKER: Wait a minute. Answer his question. Answer.

MR. GREENE: Let her refuse.

TRIAL EXAMINER: Just a minute.

Now, on the question put to you by counsel, I'll expect you to answer the question to the best of your ability.

The only time you'll be excused from answering a question is when I sustain the objection to the question.

THE WITNESS: Well, you sustained it a while ago. Why do you want me to answer now?

[89] TRIAL EXAMINER: On his cross-examination, the attorney has the right to ask the same questions all over again. Unless your counsel or the counsel for the General Counsel objects, you will be required to answer the question.

Otherwise, if you refuse to answer the question, I will have no other alternative but to strike all your testimoney from the record.

THE WITNESS: All right.

Q (By Mr. Greene) What did he say about bargaining?

A He said that he would start bargaining from a dollar and a quarter, which we make a dollar forty; I think it was a dollar 37 cents.

He said if the Union got in, that we could start bargaining from the dollar and a quarter up and they could take our holiday pay, our sick pay, stuff like that, from us, and then start bargaining from what the State allows us to have for, you know, wages, a dollar and a quarter, State wages, I think.

Q In other words, he didn't say that he would start bargaining at a dollar and a quarter but that he could?

A He said he could.

Q Right. And in regard to the holiday pay, insurance and everything, he didn't say that he was going to take those away, did he?

A No.

[90] Q He said, "When I sit down and start bargaining, all of these things have to be discussed between the Union and the Company, and if they weren't agreed upon and didn't go into the contract, then you would not have all of those benefits any more"?

A Yes. I'm not sure about that.

Q Do you recall him saying that?

A No.

Q Are you telling me that he didn't say that?

A I'm telling you I didn't know.

Q You don't know whether or not he said it?

A That's right.

Q He could have said it, but you don't know?

A Yes. It's a long time.

Q It's hard to remember just exactly what he said. He could have put it that way, couldn't he?

A I don't know.

Q If you don't know, he could have put it that way, too?

A He could not have, too.

Q But he could have?

TRIAL EXAMINER: I think we have exhausted this.

MR. BAKER: There's been enough argument already.

Q (By Mr. Greene) Didn't he say, in regard to the dollar and a quarter, that all the law required me to pay was a dollar and a quarter and that, "When I sit down and [91] start negotiating wages, that was all that the law required me to pay"?

A Yes.

Q Required the Company.

He said that, didn't he?

A (No response.)

Q Is your answer yes?

A Yes.

Q He didn't say that he was going to cut back to that, but that was all the law required him to pay, that might be where the bargaining started, at a dollar and a quarter?

A Yeah.

Q Did he tell you that when you bargained that neither side had to agree with the demands of either group, but whatever was agreed upon and went into the contract would be the benefits at that time and that you might wind up with more benefits but you could also wind up with less?

A Yes, sir.

He also said that we didn't have nothing to do with that contract, that's him and the Union.

Q Okay. But he did say that you then might wind up with more or you might wind up with less?

A I don't know. I don't remember that.

Q Just a minute ago, you said yes?
A I didn't hear the question.

[92] Q You didn't hear the question?
A No.

Q Well, are you telling me that he didn't say that?
A I didn't tell you whether or not he did or he didn't. I don't remember. I can't remember everything.

Q You don't remember what?
A What the question you asked me, whatever it was.

Q I asked if Mr. Zacks didn't say, when he was talking about the bargaining, that neither side had to agree with the demands of the other, but they had to talk about certain things, and whatever was talked about and whatever was agreed to and whatever went into the contract would be your wages and your benefits, and that in this bargaining process you could wind up with more benefits or more wages but you could also wind up with less?
A I don't remember.

Q Then he could have said that?
A He could have.

MR. GREENE: That's all.

MR. BAKER: No redirect.

TRIAL EXAMINER: No further questions?

You're excused, Mrs. Swann.

MR. BAKER: Thank you.

(Witness excused.)

[93] TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

BARBARA BLEVINS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

TRIAL EXAMINER: Will you give us your name?

THE WITNESS: Barbara Blevins.

TRIAL EXAMINER: And your address?

THE WITNESS: 483 East Columbus Street, Columbus.

TRIAL EXAMINER: Speak loud enough so that everybody here can hear you.

MR. BAKER: Would you keep your voice up so we can hear you in here? It's very bad in here, Mrs. Blevins.

Q (By Mr. Baker) You're not presently employed at—

A No.

Q — the R. G. Barry Corporation?
A No.

Q Were you employed there during the year 1964?
A Yes.

Q You are aware of the Union campaign that was conducted?
A Yes.

Q Did you have any conversation with any employer [94] supervision representative at that time about the Union?
A Yes.

Q Who was that supervisor?
A Two of them, Ethel Moore and Leonora, Leonora Killicut, or whatever her name is, whatever the name is.

MR. GREENE: I want to object. She's not named in the Complaint; she's not named in the Complaint.

MR. BAKER: I haven't asked about that, and I don't intend to.

MR. GREENE: Fine.

Q (By Mr. Baker) Was Ethel Moore your supervisor?
A Yes.

Q Directing your attention to this, when you had the conversation with her, will you tell us when that was?

A During the time that the Union first started the campaign and then after the hearings and during the hearings and just before the election.

Q Now, then, the conversation that you had with her just before the election, where did that take place?

A At my machine.

Q Was anybody present at the time?

A No.

Q Now, did you attend a meeting where Mr. Zacks spoke to you?

A Yes.

[95] Q Do you remember when that was?

A I don't remember exactly, the exact date; it was before the election, when he was taking everyone down in groups.

Q The election was on December 2nd, is that correct?

A Yes.

Q It is during the month, then, of November?

A Probably.

Q Now, this conversation you had with Mrs. Moore —or is it Miss Moore—was it before or after Mr. Zacks' speech?

A One before and one after.

Q Did both take place at your work station?

A Yes.

Q What did Miss Moore say?
A After the meeting?

Q The conversation before the meeting.
A Just wondered what I thought about the Union and why I thought the girls wanted a Union.

Q Anything else?
A Was I satisfied with my job.

Q Anything else that you can recall she said?
A No, not right at the time then.

Q After the meeting, you had another conversation with her?
[96] A Yes.

Q Both of you two, only you people present?
A Yes.

Q What did she say to you about the Union after the meeting with Mr. Zacks?

A She said, she came by the machine and said, "Boy, the tension is getting me down.'

I said, "It's not bothering me."

And she said, "I'd just as soon have the Union election over with, wouldn't you?"

I said, "Yes."

She said, "Do you know why the women, why the girls want the Union?"

"I imagine," I said, "to protect their job. Most places have a Union for that reason."

She said, "Are you satisfied with your job?" Again, she asked me.

I said, "I'm satisfied with everything except when we make bonus they take half." I don't think that's fair. We work for the money; they don't."

She said, "Are you for the Union?"

I said, I didn't say I was for the Union; I said I thought everybody should have a Union.

Q Do you remember her saying anything else?

A Well, we had a lot of talks. They always got around [97] to the Union and why we wanted one.

Q She did ask you on several occasions why you wanted a Union?

A Yes.

Q Did she —

TRIAL EXAMINER: Did you ever answer her?

THE WITNESS: Answer her? I told her I thought the reason why most of them wanted a Union was to protect their jobs, because they would transfer us around and then we were supposed to be paid off-standard. Sometimes we was; sometimes we wasn't.

Q (By Mr. Baker) You stated that you went to the meeting where Mr. Zacks talked.

How did you know where that was going to be, the meeting?

A We went to work that afternoon. Ethel came into the lunchroom and tells me there was going to be a meeting with 10 or 12 girls downstairs and she would come to our machines and let us know when it would be.

Q You said in the lunchroom. Was it there where the meeting was held?

A We always went to the lunchroom, 'til the day-girls would leave their machines.

Q It was where the meeting was held?

A Downstairs.

[98] Q Was it in the lunchroom?

A Yes, I think so. I don't really know.

Q Had you ever been there before?

A No.

Q Now, so Ethel Moore said she would come by and tell you when the meeting would be?

A Yes.

Q Did she subsequently come by and tell you?

A No. I think Leonora was the one.

Q Who?

A Leonora.

Q What did Leonora tell you?

A She told us to come, she would show where to go.

Q That's all?

A She said we were going over to a meeting.

TRIAL EXAMINER: Did she tell you what it was going to be about?

THE WITNESS: No; she didn't know what it was going to be about, but we already knew.

TRIAL EXAMINER: How did you know?

THE WITNESS: From the other girls, who had already been there.

TRIAL EXAMINER: What did you think it was going to be about?

THE WITNESS: About them not voting for the Union.

[99] TRIAL EXAMINER: If you knew that, why did you go?

THE WITNESS: I had already been to the Union meetings. I wanted to hear both. I wanted to hear from the Company, what it had to say.

Q (By Mr. Baker) When you got down there, how many were present, other people?

A Approximately 12 employees. I don't remember exactly.

Q Did Mr. Zacks make a talk to you?

A Yes.

Q How did he make this talk?

A He started off by saying if we didn't want to stay we didn't have to. No one left.

Then he presumed that if no one left, we wanted to hear what he had to say.

Q Did he say anything else?

A Yes.

Q About the people not leaving?

A He said, he said that — he did say something about not leaving. He said, "I presume" — he didn't direct it to anybody — "since you're not leaving, that since you're not leaving that you're not for the Union or you're for the Union," I forget how he said that.

Anyway, after that, or, anyway, he gave us —

* * *

[101] "We don't need you." I have a large family, we need his employment, and the Union does protect his job.

Q What did he say?

Was there a question period following the speech?

A No. He give us a book to read, what would happen to you when they were trying to organize the plant, your house could be bombed or your car could be tore up.

Q This book here (indicating)?

A Yes. And another pamphlet or something.

Q Another letter like this (indicating)?

A Uh huh. Then he let us look through the book, read a little bit, then he stopped us and told us we could take it home and study it later.

Q Do you know, did anybody ask questions after the speech was over?

A A few people did. I don't remember what they asked.

Q Why did you tell why you were for the Union?

A Because I was.

Q Did he ask you?

A No. I just stated that I was.

I didn't direct it to him.

* * *

[105] A Yes. He wanted to know if I understood everything that went on in the meeting.

Q What did you tell him?

A Yes.

Q Did he repeat any of them to you?

A No. No. He just asked if I understood everything that went on in the meeting.

Q And at that meeting, Mr. Zacks really read his speech?

A Yes, he did.

He said he didn't want to say anything that was illegal and that he had a lawyer prepare the speech for him.

TRIAL EXAMINER: Did he say anything to you in the meeting that was not a part of his written speech?

THE WITNESS: Well, I don't really remember. He probably did.

I don't know how he could read and look at us all the time, too.

TRIAL EXAMINER: Go ahead, Mr. Baker.

Q (By Mr. Baker) Was he looking at you all the time?

A Not every minute but quite a bit to be reading. He did have a thing before him, a bunch of papers and things.

Q You did think he was reading it at that time?

A I didn't think he was reading at all.

* * *

[108] MR. BAKER: That's my objection. If it's not responsive to the question.

TRIAL EXAMINER: I'll leave it stand.

THE WITNESS: It's just some of the things that he told us at that meeting, which he also told us that he transferred us from one job to another —

MR. GREENE: I'm going to object.

TRIAL EXAMINER: Wait until the question is put to you. I'll strike the last answer.

Q (By Mr. Baker) What else do you recall, if he said —

MR. GREENE: Object.

TRIAL EXAMINER: Overruled.

MR. BAKER: Go ahead.

A He said like now, when we were being transferred from one job to another, but if there was a Union in, we would be sent home when we run out of work instead of being transferred to another job.

That way, you know, you would lose money.

TRIAL EXAMINER: Was this part of the speech that he was reading?

THE WITNESS: It was part of what he read at the meeting to try to talk us out of joining or voting for the Union.

MR. BAKER: That's all I have.

TRIAL EXAMINER: Mr. Jordan?

• • •

[111] MR. GREENE: I would object and move to strike the testimony elicited.

TRIAL EXAMINER: Well, we'll let it stand. Go ahead.

MR. GREENE: Well, I would like to see a copy of this witness's statement.

TRIAL EXAMINER: We will have a short recess. Is it long or short?

MR. BAKER: A fairly short one.

TRIAL EXAMINER: A long or short one?

MR. BAKER: Fairly short, but handwritten. It may take a while.

Here it is, Mr. Greene.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

## CROSS-EXAMINATION

Q (By Mr. Greene) Miss Blevins, in regard to the meeting you said you attended, when did you attend the meetings?

A Just before they had the election, when the Union was passing out pamphlets and trying — I don't know the exact date.

Q. December, last part of November?

A No. November.

[112] Q Pretty close to election time?

A No. In November.

Q By the time you got there, do you know whether there was a number of meetings before you had yours?

A Yes.

Q When he talked, spoke at the meeting, did Mr. Zacks have in front of him some papers that looked like a prepared script and talk?

A Yes. They were typewritten.

Q All right. When you came in and sat down, did he look down at those papers and start reading and turning the pages?

A Not right off.

Q What did he say?

What did he do when he first same in?

What did you do?

A He offered us all a cup of coffee and doughnuts. Then he let us read that little book.

Q Go ahead.

A Then he told us that he didn't want to say anything that was illegal and that he had his attorney or the Company's attorney to write this for him.

Q From that point on, when he started turning the pages —

A Yes.

• • •

[118] Q And he could do away with the bonuses?

A Yes, he said there probably wouldn't be a bonus.

Q He didn't say that he would have to bargain with the Union?

A Yes. He said he would have to bargain with the Union. Everybody knows that.

Q If it was a dollar and a half, it was a dollar and a half. If it was a dollar and a quarter, it was a dollar and a quarter?

A That's right.

Q If there was a bonus in there, it would be paid; otherwise, no. Is that right?

A That's right.

Q He didn't have to agree with the demands of the Union, and the Union didn't have to agree with the demands of his?

A Yes, sir.

Q But whatever they did agree on, that would be in the contract?

A That's right.

Q What you might wind up with would be more than what you have now, and you might wind up with less?

A That's right.

Q And he said this in connection with the dollar and a quarter and the bonus, is that it?

A It was during the meeting —

[119] Q During that time?

A (Nodding affirmatively.)

Q Now, do you know Ruth McCann?

A Ruth McCann?

I don't think so.

Q Do you know Edith Wilkinson?

A Edith Wilkinson?

I know an Edith, an Edith that works nights. I don't know if that is the same one or not.

Q Was she there in the meeting with you?
A I can only remember three girls at the meeting with me.

Q Do you know John Carter?
A Not unless that was the boy from the Air Force.

Q Do you know Ruby MacGregor?
A Yes.

Q Was she there?
A Yes.

Q Now, you said you had a conversation with Mr. Zacks just before the election?
A After I had been to that meeting.

Q And before the election or after the election?
A Before.

Q Where did the conversation take place?
A In coming through the office. I was late; they lock the door; you have to come through the office.

* * *

[124] Q It was approximately better than a year —
A Oh, yes —

Q — from the time the conversation took place until you told anyone about it?
A I thought that was all dead and gone.

Q Yes.

Now, you said that you had a conversation with Ethel Moore before the group meeting that you testified about; you said several, but one of them you testified about —

A Yes.

Q Tell me how that conversation took place.

A Well, the supervisors come around every now and then to see if you're having trouble and if you need her, and at that time she was checking repairs, and she said, "Boy, this Union is really getting on my nerves, this election."

She said, really, she asked me before once, was I for the Union already.

She said did I have any idea why the girls wanted a Union; and was I satisfied with my job, and was I satisfied with my job.

I said, yes, but I didn't like to be moved, moved from place to place, and I'm not satisfied with not getting all of my bonus.

* * *

[129] Q How do you know that?

A How do I know?

MR. GREENE: Object. She said nobody asked her name.

MR. BAKER: Okay.

Q (By Mr. Baker) One other question: When did you see me for the first time?

A Today.

Q Is that when you told me about the conversation you had with Mr. Zacks?

A Yes.

MR. BAKER: That's all that I have.

TRIAL EXAMINER: Any further questions of this witness?

If not, you're excused.

MR. BAKER: You're excused.

(Witness excused.)

TRIAL EXAMINER: Call your next witness, Mr. Baker.

## VIRGINIA COOLEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

TRIAL EXAMINER: Give us your full name.

THE WITNESS: My name is Virginia Cooley, C-o-o-l-e-y.

[130] TRIAL EXAMINER: What is your address?

THE WITNESS: 4476 St. Rita Lane, Columbus.

Q (By Mr. Baker) Miss Cooley, were you employed by the R. G. Barry Corporation during the year 1964?

A Yes.

Q You were aware then that there was a campaign among the employees by the Textile Workers Union on organizing a Union at that time?

A Yes.

Q Now, I'll ask you: Who was your supervisor?

A Bea Hyder.

Q H-y-d-e-r?

A Yes.

Q What was your job?

A I put the vamps on. I vamped the soles of the shoe, the sole.

Q Did you have any conversation with any supervisor wherein the Union was discussed?

A Yes, with Bea.

Q Bea Hyder, your supervisor?

A Yes, sir.

Q Was there more than one conversation?

A Just one.

Q When did it, the conversation, take place?

A When?

[131] Q When?

A It was shortly after I come from a hearing, when I appeared here, down here in front about the Union —

Q Was that a National Labor Relations Board hearing?

A Yes.

MR. BAKER: Could we stipulate that the hearing was conducted on or about October —

MR. GREENE: The fall of '64, early fall of '64?

MR. JORDAN: Let's have the exact date.

MR. BAKER: Let's get the exact date.

MR. JORDAN: The 8th of October, 1964.

MR. BAKER: October 8th, 1964.

I will stipulate, your Honor, that is when the representational hearing and Case No. RC-6057 was held.

MR. GREENE: The Employer will stipulate.

Q (By Mr. Baker) This conversation occurred shortly after you came back after being a witness in the hearing?

A Yes.

Q Where did it take place?

A In the lunchroom.

Q Was anyone else present?

A No.

Q Tell us what Bea said to you about the Union and what, if anything, you said in reply?

A Well, it all started by Bea telling me she understood [132] that I had made a statement that I didn't like her. And I said that it was true.

And she wanted to know why, and I told her that if she had time, we would talk about it.

And she said she did have time, so we went back in the lunchroom, and then's when she said, then's when she said, "Now, Virginia, why don't you like me," or something to that effect.

And I said, "Well, it's the manner that you treat the girls," and I said, "If you happen to have trouble at home," I said, "you usually come in here and take it out on us."

So then, I don't just remember what followed after that, other than she said, "Virginia," she said, "you surprised me when I learned that you was for the Union."

She said, "Why would you girls want the Union up here?"

And I told her that at least we would get a fair shake.

And she said, "What do you mean by that?"

I said, "Well, they wouldn't be taking half of our bonus." And I said if a girl came in on Saturday and which we done overtime and she was unable to come back in on Monday, she wouldn't lose her overtime that way.

And she then — let me see — she then said, "Well," — [133] let me see, I got to think now.

Oh, then, it went on then, and she said, "Well," she said, "you know," she said, "this factory won't let us. We can't have a Union in this factory."

I said "Why not?"

She said, "Because the factory could close its doors first."

MR. JORDAN: I didn't hear that last remark.

THE WITNESS: "The factory could close its doors first."

A (Continuing) And I said, "Oh, Bea, I don't believe that."

She said they would, if they had to move out piece by piece.

Q (By Mr. Baker) Did she say when they would move, or what?

A Well, she said they would move if they had to, they would move at night piece by piece.

Q "At night, piece by piece"?

A (Nodding affirmatively.)

Q Do you recall anything else that she said?

A No.

Q You attended a meeting, or did you not attend a meeting where Mr. Zacks spoke?

A No, sir, I didn't.

[134] MR. BAKER: I have no further questions.

TRIAL EXAMINER: Any further questions?

Mr. Jordan?

MR. JORDAN: I have no questions.

TRIAL EXAMINER: Mr. Greene?

MR. GREENE: Yes.

## CROSS-EXAMINATION

Q (By Mr. Greene) Miss Cooley, were you an observer on behalf of the Union at the election?

A Yes, sir.

Q How long have you known Bea Hyder?

A I met Bea back quite some time, before I went to work for Barry's I knew Bea.

Q You all worked together?

A Yes. I knew Bea when we worked for the United Woolen Company.

Q Did you all work over there together?

A I didn't work just exactly with her, no.

Q You knew her over there?

A Yes, I knew her.

Q How long did you work together?

A I, myself, worked there five years, but I don't believe she was there that long.

Q She was there a few years while you were there?
A Yes.

[135] Q How long at R. G. Barry did you work together?
A We didn't work together at R. G. Barry.

Q You worked at the plant. You worked there and she worked there?
A That's right.

Q For how long?
A I was there nine years.

Q How long was Bea?
Did Bea go over about the same time you did?
A No. Bea went over before I did.

Q You were there together —
A Yes.

Q — for nine years?
A No. She was there when I went over there.

Q But you were over there together?
A (No response.)

MR. BAKER: We will stipulate that they were there together.

MR. GREENE: I'm going up to something here, if you would allow me.

TRIAL EXAMINER: Go ahead.

Q (By Mr. Greene) Do you all live fairly close together?

A No.

Q You never ride together?

[136] A No.

Q You never did that, in any way —

A Not with Bea.

Q Did you have any personal contact with Bea at all?

A Just through work.

Q Did you all ever eat lunch together?

A No.

Q Never?

Ever took any breaks together or anything like that?

A No.

Q When was your employment terminated with R. G. Barry?

A February 17, 1965.

Q You were terminated, is that correct?

A I was fired.

MR. GREENE: Okay. That's all.

MR. BAKER: I just have one other question.

## REDIRECT EXAMINATION

Q (By Mr. Baker) Did you or did you not attend a small group meeting where the Union was discussed?

A No.

Q Did anyone ever ask you to?

A No.

Q Was there anything ever said to you about the meeting?

A No.

Q Did you appear as a witness in this R case hearing, [137] that you referred to, that was held on October the 8th, the Board hearing, you know?

A Yes, I was here.

Q Were you a witness in that hearing?

A No.

Q But you were present?

A Yes.

Q How many other employees were present, if you recall?

A I believe there were four of us.

Q Any of them still working for the Company, or do you know?

MR. GREENE: Object.

A I don't have any idea.

MR. GREENE: Object.

TRIAL EXAMINER: She may answer.

MR. GREENE: What was the answer?

THE WITNESS: Pardon?

MR. GREENE: What was your answer?

That you don't know?

THE WITNESS: That I don't know.

MR. GREENE: Okay.

TRIAL EXAMINER: I will let the answer stand.

MR. BAKER: That's all.

MR. JORDAN: I have no questions.

[138] TRIAL EXAMINER: Any further questions of this witness?

MR. BAKER: No questions.

TRIAL EXAMINER: You're excused.

THE WITNESS: Thank you.

(Witness excused.)

TRIAL EXAMINER: Call your next witness, Mr. Baker.

MR. BAKER: Before I go on, I think I ought to mention one thing.

We have one witness, Alberta Warner, who is at home. She is recovering from an operation.

I got a phone call, as you recall, you were all here, and we have received word from her doctor, a Dr. Cross, I believe, an osteopath, stating that he will not release her to come to this hearing to engage in court procedures, but that he feels that she is able to withstand the rigors of a deposition.

However, I would be willing to stipulate, if the Respondent would, that if called she would testify — it's not very much — that Bea Hyder asked her, or this would be her testimony:

She would just say, "Bea asked me what I thought about the Union."

MR. GREENE: Now, we can't stipulate to that.

TRIAL EXAMINER: You would not stipulate that if she [139] was called she would testify to that, she would so testify?

That is what he is asking.

MR. GREENE: Let's see. I'm making my response for a reason. Let's see.

The reason I'm saying that, Mr. Trial Examiner, is Mrs. Hyder gave a statement in this case, and in this statement, I think, she was asked point-blank that question, and made a denial.

Now, I don't know. If I understand what you're saying, if this woman came here and she might testify, she might get up and testify to that?

MR. BAKER: That's all I asked to stipulate. If called, she would testify that Bea Hyder asked her, "What do you think about the Union?"

TRIAL EXAMINER: Let's go off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Do you want to make a statement?

MR. BAKER: May I also state why?

TRIAL EXAMINER: Well, if you so desire to state that she is unable to appear because of illness, go ahead.

MR. BAKER: Your Honor, the Assistant Regional Attorney of the Ninth Region was called last week, I believe, Thursday, by a —

[140] TRIAL EXAMINER: I don't think you need to go into any great elaboration.

MR. BAKER: All right.

TRIAL EXAMINER: As I understand, she is ill.

MR. BAKER: Recently recovering —

MR. GREENE: We know that.

TRIAL EXAMINER: State the stipulation.

MR. BAKER: If called, Alberta Warner would testify that on November 16, 19 and 64, after having attended one of the meetings which have been discussed here, that she was approached by her supervisors, Bea Hyder, who asked her, "What do you think about the Union?"

That is the stipulation.

TRIAL EXAMINER: Very well. Is that stipulation acceptable to all parties?

MR. GREENE: Let's have it —

MR. BAKER: "What do you think about the Union?"

MR. GREENE: Right.

TRIAL EXAMINER: Does that agree with Mr. Jordan?

MR. JORDAN: Very well.

TRIAL EXAMINER: Very well. The stipulation is accepted as part of this record.

Call your next witness, Mr. Baker.

MR. BAKER: May we have about three minutes?

TRIAL EXAMINER: Three-minute recess.

[141] (Recess taken.)

TRIAL EXAMINER: Go ahead.

## URSULA PARKER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

TRIAL EXAMINER: Will you give us your full name.

THE WITNESS: Ursula Parker, U-r-s-u-l-a, Parker.

TRIAL EXAMINER: Your address?

THE WITNESS: 2329 Dawnlight, D-a-w-n-l-i-g-h-t.

Q (By Mr. Baker) Miss Parker, were you employed at R. G. Barry during the year 1964?

A Yes, I was.

Q Were you there during the campaign by the Textile Workers Union to organize the employees?

A Yes.

Q Did you attend a meeting where Mr. Zacks spoke about the Union?

A Yes, I attended the first meeting there was.

Q The first meeting?

A Yes.

Q How did you know there was going to be a meeting?

A Well, it was one of my supervisors told me, it was Twila or Bea.

* * *

[143] Q When you got there, do you know if Mr. Zacks was there?

A And Bessie and —

Q And he spoke to you?

A Yes. We even have coffee and doughnuts.

MR. GREENE: What did she say?

MR. BAKER: We even have coffee and doughnuts.

MR. GREENE: Okay.

Q (By Mr. Baker) Did you ever have coffee and doughnuts from the Company?

A No. We do get coffee and doughnuts free, but it's Chef's Catering.

Q Chef's Catering.

When you first went in, what happened?

A Well, all of us didn't know what it was all about. It was new to us, but Gordon started talking, Gordon Zacks started talking about the Union.

Q Now, he was reading something at that time, or talking?

A Well, he was reading something off.

He said, as a matter of fact, he made a statement. He said he had that written down from his lawyer, that it was all prepared for him so there couldn't go nothing wrong.

* * *

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

DOCKET NO. 9-CA-3404, 9-CA-3492

IN THE MATTER OF:

R. G. BARRY CORPORATION

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

Place: Columbus, Ohio

Date: May 17, 1966

Pages: 161-217

C.S.A. Reporting Corporation
Official Reporters
300 Seventh Street, S. W.
Washington, D. C. 20024
393-2320

[161]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Ninth Region

Cases Nos. 9-CA-3404, 9-CA-3492

In the Matter of:

R. G. BARRY CORPORATION

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,

New United States Post Office and
Court House, Room 322
Hearing Room,
85 Marconi Boulevard,
Columbus, Ohio,
Tuesday, May 17, 1966.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a.m.

BEFORE:

LOWELL GOERLICH, ESQ., Trial Examiner.

APPEARANCES:

JOHN V. BAKER, Esq.,
Room 2407,
Federal Office Building,
550 Main Street,
Cincinnati, Ohio 45202,
appearing on behalf of the
General Counsel.

DANIEL B. JORDAN, Esq.,
Assistant General Counsel,
99 University Place,
New York, New York 10003,
appearing on behalf of
Textile Workers Union of
America, AFL-CIO, the
Charging Party.

[162]
APPEARANCES (Continued):
GLENN L. GREEN, JR., Esq.,
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& Trenam,
501 City National Bank Building,
Miami, Florida 33130,
appearing on behalf of
R. G. Barry Corporation,
the Respondent.

JAMES J. KENNEDY,
International Representative,
Textile Workers Union of America,
AFL-CIO,
1729 Superior Avenue,
Cleveland, Ohio 44114.

JAMES W. EDMONDS,
International Representative,
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AFL-CIO,
1729 Superior Avenue,
Cleveland, Ohio 44114.

GORDON B. ZACKS,
President, R. G. Barry Corporation,
78 East Chestnut Street,
Columbus, Ohio.

ROBERT L. WOODRUFF,
Director of Personnel,
R. G. Barry Corporation,
78 East Chestnut Street,
Columbus, Ohio.

* * *

[177] MR. ZACKS: Yes, sir.

TRIAL EXAMINER: Will you take the stand.

GORDON ZACKS

resumed the stand and, having been called as a witness by and on behalf of the Respondent, having been previously duly sworn, was further examined and testified as follows:

**DIRECT EXAMINATION**

Q (By Mr. Greene) Mr. Zacks, you previously testified in this proceeding, is that correct?

A Yes, sir.

Q Now, in regard to the location of these particular group meetings that you have testified about, where were these meetings held?

A In the lunchroom, on the first floor, at 78 East Chestnut.

Q And prior to that time, what had the room been utilitzed for?

A As an employees' lunchroom.

Q Was it customary for the employees to be in and out of this lunchroom?

A Yes.

Q Has this room been used on other occasions for employee meetings?

A Yes.

Q Do you have management meetings of supervisors?

[178] A Yes.

Q Where are those meetings held?

A In our conference room.

Q Now, you have testified that while you conducted these meetings you read from a prepared text, is that correct?

A That is correct.

Q At any of these meetings, did you deviate from that text?

A Not in the prepared speech during that time I was giving the speech.

Q When you discussed the areas of working conditions and wages, when were these subjects discussed?

A In the context of the speech.

Q And when you talked about these subjects, did you read from the prepared text?

A I did.

Q Did you at any time ever compel any employees to attend these group meetings?

A I did not.

Q Did you at any time threaten any employees in these group meetings that you or your Company would make working conditions more difficult, including a reduction in hourly wages, if they selected the Union as their bargaining agent?

[179] A I did not.

Q Did you, at these meetings or at any time, any other time, threaten that you or your Company might go out of business if the employees selected the Union as their bargaining agent?

A I did not.

Q Everything that you said about these particular subjects that you have just been asked about, you read from your prepared text; is that correct?

A That is correct.

I will say this, Mr. Greene, on occasions questions may have come up in the question and answer period where I would repeat or dwell on some issue that was raised in the text, but this did not happen in every meeting.

Generally, the topics that you are talking about were covered in the prepared text, and I did not deviate from the prepared text at any meeting.

Q Now, Mr. Zacks, the General Counsel has introduced into evidence, adduced into evidence a notice that was posted or caused to be posted by you on the news centers, concerning the investigations and the contacting of people at home.

I hand you a notice, a copy of this notice, and ask if that is the notice you posted on the news centers?

A It is.

[180] Q Would you tell the Trial Examiner and the Board just what, if anything, occurred that led to the posting of this notice?

A Yes.

MR. BAKER: I think I am going to object to this, your Honor.

Whether there is a violation of 8 (a) (1) or not, it does not require that motive be involved to violate the Act. The Board has constantly held that motive is not an element of the 8 (a) (1) violation.

MR. GREENE: Mr. Baker has been talking about our intentions to impede the process of the Board. This is legitimate.

TRIAL EXAMINER: Objection overruled.

Q (By Mr. Greene) Answer the question, Mr. Zacks.

A On Sunday evening, I was having dinner with my family in a restaurant in town. I received a phone call from a supervisor. I was paged to the phone at the restaurant.

The supervisor reported to me that one of her employees had contacted her and was very frightened and upset because of the strange call she had received in her home. She urged me to get in touch with this particular employee, which I did.

The employee advised me that she had received a call from someone who allegedly represented the Board. This [181] individual directed or ordered her to be at home at 5:00 o'clock on the following Monday and said this in such a tone and in such a way —

MR. BAKER: I am going to object to this as all being hearsay.

MR. GREENE: We are not introducing this for the truth of it. We are introducing it for the purpose of showing the background of this notice.

TRIAL EXAMINER: Go ahead, Mr. Zacks.

MR. BAKER: If I may be heard.

If it is going to go in, even though hearsay, it ought to go in as to what that employee allegedly said, rather than in the conclusions on terms in which Mr. Zacks presented the evidence.

TRIAL EXAMINER: Mr. Zacks is simply reciting the basis upon which he determined to post the special notice.

Go ahead, Mr. Zacks.

A (Continuing) At any rate, this girl was very upset, and her family was upset, and I immediately con-

tacted our attorney and he suggested that I contact the Board to find out if, in fact, the Board was conducting its investigation.

The following morning, I had Mr. Jayne, who at that time was our personnel manager, contact the local office of the Board and ask if they were conducting an additional investigation because, to our knowledge, the investigation [182] had been completed.

TRIAL EXAMINER: What was the date of this, Mr. Zacks?

THE WITNESS: If you can give me the notice, what was the date on the notice?

It's on the bottom of the notice, the date.

TRIAL EXAMINER: Date, February 8, 1965.

THE WITNESS: February 8.

Q (By Mr. Greene) 1965?
A 1965.

TRIAL EXAMINER: Go ahead.

A (Continuing) My recollection is that February 8 was a Tuesday, and I think this took place on a Monday.

The contact on through the Board was made on the Monday following the Sunday that I had received this call.

TRIAL EXAMINER: Go ahead. What happened?

THE WITNESS: We asked the Board, as I said, if they were, in fact, conducting an investigation in the area because someone was representing themselves as the Board's agents, and we talked with Mr. Van Gessel.

Mr. Van Gessel told us that if an investigation was being conducted that he would not tell us about it and he would not admit that there was not an investigation and would not deny there was an investigation at that time.

I was concerned because I had had experience with Mr. Van Gessel personally and I had found him to be a [183] gentleman, and I couldn't imagine; if it were he, that he would have talked with this person in the manner and form in which she reported it to me.

So I contacted our attorney again to find out really what protection if any was available to our people in the event that the person was not, in fact, a Board agent.

He, in fact, gave me the information as to the rights of the employees under the law, and this was the information that we put up on the news centers.

At the same time, I contacted Mr. Van Gessel again to tell him if, in fact, there was an investigation that we wanted to cooperate with the Board in every possible way with a minimum of interference to our associates, and if it would be of value we would offer any of our people on Company time; they were free to come down to the plant and interview them if they wanted to.

It was just to avoid the concern and the fright that took place with this particular person that caused me to put this notice up.

TRIAL EXAMINER: Did you ever find out whether or not the Board was conducting an investigation prior to February 8th?

THE WITNESS: To this date, I do not know who it was that made that call.

TRIAL EXAMINER: Mr. Baker, do you know whether or not [184] the Board was investigating —

MR. BAKER: Yes, sir.

TRIAL EXAMINER: — this case during the period shortly prior to February 8th?

MR. BAKER: Yes, sir, I do.

TRIAL EXAMINER: Were they?

MR. BAKER: They were.

I might admit that the investigation was somewhat, I think, somewhat different than was the rule. This investigation was limited to one particular matter, but it was being conducted.

TRIAL EXAMINER: All right. Go ahead.

Q (By Mr. Greene) So then the notice was posted?

A That's correct.

Q Mr. Zacks, I hand you here a copy.

TRIAL EXAMINER: Let me ask you this:

Did anyone come down to your plant and interview any employees?

THE WITNESS: Yes — no. Prior to that.

TRIAL EXAMINER: After this date, did anyone come down to the plant?

THE WITNESS: No, no.

TRIAL EXAMINER: Very well.

THE WITNESS: Not to my knowledge. I don't remember anyone.

* * *

[193] Did you hear her testify to that?

A I did.

Q Did you ever have a conversation with her or anyone else to that effect?

A No, sir.

MR. GREENE: I think that's all.

TRIAL EXAMINER: Do you have any questions of Mr. Zacks, Mr. Baker?

MR. BAKER: Yes, sir.

TRIAL EXAMINER: Did you say you did?

MR. BAKER: Yes, sir.

TRIAL EXAMINER: Go ahead. I thought you said you didn't.

Go ahead. Excuse me.

## CROSS-EXAMINATION

Q (By Mr. Baker) Did you state that you never found out, after having posted a notice, that there were agents of the N.L.R.B., that they were in fact investigating part of the case?

A No. I said that I never found out that the call made to this particular individual in question was, in fact, made by a representative of the N.L.R.B. Board.

Q But you did shortly find out thereafter that the Board was conducting an investigation, in fact?

A I did.

[194] Q You didn't take the notice down that was posted, did you, that was posted?

A I don't remember how long that notice stayed up, sir.

Q You didn't post a notice advising the employees that they did have the right to talk to the Government?

A I didn't say this, in the notice, that they didn't have the right.

Q You never put up a notice unequivocally stating that it is their right under law if they wished to discuss anything or be interviewed by the Government, that they had that privilege and right; is that correct?

A The only notice that I put up was the notice that you see.

Q This is true? Even though you did learn shortly after posting that notice that there was, in fact, an investigation being conducted?

A That is correct.

Q An investigation being conducted to an extent, as to charges made by the Company to a certain extent?

A Yes, that is correct. I found out that the investigation was an investigation to our benefit, but that didn't change our thinking, that no one should have frightened an individual the particular way this particular person was frightened.

* * *

[207] Q All right. When you made these home contacts, these some 700 home contacts, did you keep a list of the names and addresses as you would compile these people in their locations?

A Yes, sir.

TRIAL EXAMINER: Mr. Kennedy, what is the percentage of the employees who were employed by the Company that you did not contact at their homes?

THE WITNESS: The percentage, I wouldn't know. I would presume — I'm just guessing now. I would say a hundred.

TRIAL EXAMINER: It may have been a hundred that you didn't actually —

THE WITNESS: We couldn't.

TRIAL EXAMINER: — contact at home?

THE WITNESS: That we couldn't locate, yes, sir.

Q (By Mr. Greene) So that means you contacted at home approximately 400 of the employees at R. G. Barry?

TRIAL EXAMINER: You said 700 contacts?

THE WITNESS: When I say "contacts," I mean that we made 700 home contacts, maybe we contacted the same person twice.

TRIAL EXAMINER: I see.

Q (By Mr. Greene) So then, approximately how many people would you say that you did contact?

A You mean as an individual?

[208] Q Right.

A I'd say 300.

Q Okay. Did you have Union meetings?

A What's that?

Q Did you have Union meetings here in Columbus?

A Yes, sir.

Q Approximately how many meetings did you have over the year, just your best estimate?

A Well, I'm just guessing. I would say maybe 10 or 12.

Q Did you have most of these meetings close to the time that the election was held?

A Yes, sir.

Q Did you write letters to the employees' homes?

A Yes, sir.

Q How many?

TRIAL EXAMINER: How many?

A Well, all the names that we had, but returns were very high on account of the people moving.

TRIAL EXAMINER: How many names did you have on your mailing list?

THE WITNESS: I think about 400.

TRIAL EXAMINER: All right.

Q (By Mr. Greene) How many others, Mr. Kennedy? How many letters? I'm sorry.

A How many? How many?

[209] Q How many letters did you send out?

A That's what I said, about 400.

Q 400 different letters?

A Oh, no. No.

Q How many different letters?

A I don't recall.

Q You sent several, didn't you, though?

A Yes, several.

Q Mr. Kennedy, on November 30th —

TRIAL EXAMINER: Excuse me, Mr. Greene. I want to ask Mr. Kennedy:

How did you make up your mailing lists?

THE WITNESS: From the cards that we got.

Q (By Mr. Greene) Now, on November 30th, Mr. Kennedy, a telegram was sent to Gordon Zacks, at R. G. Barry, by Sol Stetin, requesting a list of employees. Are you familiar with that telegram?

A Yes, sir.

Q This was on November 30th, prior to the time the election was held on December 2nd; is that correct?

A That's correct.

Q In this statement, you requested these names because it was your position that certain untrue in-plant Company statements to the employees required an immediate response; is that right?

[210] A Yes, sir.

Q Now, was it your position that certain untrue in-plant statements were being made prior to November 30th, or did you just learn about this on November 30th?

A I don't recall that, sir.

Q Did you put out any kind of circular to employees after you made this request or prior to the time you made this request to the effect that the Company was making untrue statements and pointing out what statements were being made and how they were untrue?

A I don't remember.

Q Mr. Kennedy, to your knowledge, were telephone calls made to any of these people concerning voting for the Union, or anything said over the telephone in order to encourage these employees to sign a card or vote or support the Textile Workers Union?

A We probably did make telephone calls.

I don't know about asking them to sign cards. We made phone calls.

We had a committee in the plant. We constantly called our committee.

Q And for what purpose?

A For the purpose of trying to build up meetings, for the purpose of trying to find out what the present trend was in the plant.

[211] TRIAL EXAMINER: Did the employees report to you that Mr. Zacks was conducting meetings with various employees?

THE WITNESS: Yes, sir.

Q (By Mr. Greene) Mr. Kennedy, I hand you here a group of literature, letters, handbills, and ask you to look at that and see if these are, not necessarily all, but authentic reproductions of the circulars, handbills, and letters that you passed out, or that were passed out by your Union during this campaign?

A Yes, sir.

Some of these are photostats, but I guess most of them were passed out, if not by me, then before I came into the picture.

MR. GREENE: We would like to have the packet marked as Exhibit 2.

(The documents above-referred to were marked Respondent's Exhibit No. 2 for identification.)

MR. GREENE: We would like to introduce these into the record as Respondent's Exhibit No. 2.

TRIAL EXAMINER: These are certain of the Union's handbills?

Any objection to their receipt?

MR. BAKER: No objection from General Counsel.

[212] TRIAL EXAMINER: Respondent's Exhibit No. 2 is received in evidence.

(The documents above-referred to, heretofore marked Respondent's Exhibit No. 2, were received in evidence.)

TRIAL EXAMINER: Mr. Kennedy, did you ever pass out handbills?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: What did you observe? Did they take them? Did they refuse to take them?

THE WITNESS: The reception was fairly good.

TRIAL EXAMINER: What?

THE WITNESS: Fairly good. They took them pretty well.

TRIAL EXAMINER: What do you mean? What do you mean, "pretty well"?

THE WITNESS: Mr. Zacks testified that he saw a lot of leaflets on the street.

I didn't see any such thing, maybe one or two.

TRIAL EXAMINER: In other words, most of the employees took a handbill?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Is this right?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Very well.

* * *

## APPENDIX G

## GENERAL COUNSEL'S EXHIBIT 2 —

## TEXT OF SPEECH MADE TO EMPLOYEES OF PETITIONER BY PRESIDENT ZACKS

I have asked you down here to talk to you about this **Union problem that all of us are involved in here at R. G. Barry.** Now you notice that I said all of us. That is exactly true and correct. This thing does involve all of us and nobody can afford to sit back and say, "Well, I am not going to get involved in this. I am going to sit on the fence and let everybody else fight it out. It doesn't concern me". But that is completely wrong thinking and you can't sit up there because it does involve you and you are going to see just how much you are involved in this situation before we finish our talk here today.

Now before we get started I want everybody to know that **you are not required to stay.** If you want to leave now, feel perfectly free to leave. You know what we are going to talk about and if you are not interested in what we are going to say or if you don't think you want to hear it, you are perfectly free to leave. Or, if during the meeting you want to get up and leave, feel perfectly free to do so. But what I want to do today is present some facts to you — nothing more — I want to put some facts on the table and let you consider them or do whatever you want to with them so you can stay, or leave, or whatever you want to do. However, under our company policy the time spent here will be paid to you at average.

Now, as I said before, all of you here are involved. Now, let's consider that at the very outset. **Why is everybody here involved?** Well, first of all we are going to have the election, as you know, on December 2, 1964. Most everyone here will be allowed to vote. We wanted everybody at Barry to vote because we believe everybody will be seriously afftected by the outcome and should have a chance to vote— the Union only wanted certain specified groups but we have tried to get as many people as we possibly could eligible to vote in this election.

NOW, here's the way this vote works! The Union only had to have 30% of the people signed up to file the petition with NLRB but this election is handled in a little bit different way. **We have approximately 500 people eligibile to vote. If only 25** of you go in there and cast a vote and 13 of those people cast a vote for the Textile Workers Union, all 500 people here at R. G. Barry will be represented by the Textile Workers Union. This is true because you are **not voting on whether or not you want to become a member of** the Textile Workers Union. **You're voting on whether or not you want the Textile Workers Union to be your exclusive bargaining agent at R. G. Barry.** In other words, do you want them to do your talking for you. Now that's exactly what you are voting on. So even if you vote against them, or even **if you oppose them in every possible way.** Even if you don't vote, **they will still be your representative here at R. G. Bafry and your spokesman if a majority of those that vote, vote for this Union.** So you see everyone here is involved whether you vote or not. If all 500 of us here at R. G. Barry vote, then the Union must get 251 votes to win the right to be your spokesman — instead of 13. So let's get everybody talking about this and concerned

about this and thinking about it and let's get everybody down there to vote when we do have this election.

Now, let's talk a minute about this **election.** There's been a lot of rumors going around and a lot of talk going on that the **Company is trying to delay** the election and doesn't even want to have the election. Well, this is completely unfounded and untrue. Each of you have a copy of the first letter which we received from the Textile Workers Union. When you read it, you will note that they don't say anything at all about an election. . . . . They say come on and let us in there, and let us sit down and negotiate a contract. They wanted us to negotiate a contract with them concerning all of your affairs here at R. G. Barry. Now, if we had said come on in, we'll sit down and negotiate with you, you wouldn't have had an opportunity to say, "Yes, I want the Union" or "No, I don't want the Union". We thought that this was such an important matter and involved the most important decision that you'll probably ever make while you work for R. G. Barry that we insisted on and got this election for you. Now who wanted the election and who didn't want the election?

Now, let's just consider a few other things. **As I say we may have this election,** it's scheduled, but the **Union could withdraw.** They could pull out before we ever get around to having the election. We don't know this so we've got to go ahead and assume that we will have this election on the 2nd of December. We also have to go a little bit farther and consider what the situation would be if the Textile Workers Union won the election. Now we strongly believe that we are going to win the election. But in order for you to really understand what the situation is, we have to consider what would be the situation

if the Union won the election. All right now, let's assume that on December 2nd a majority of the people that go in there and vote say "Yes, I want the Union". "I don't want to deal with Barry any more." "I don't want to continue in the future as we have in the past". **Now you see I am here today telling you what our position is** and out position is — we want to continue with you in the future as we have in the past. [We want to continue dealing directly with you and giving you wage increases and fringe benefits and improving your standard of living whenever the company is in a position to do so. Now, we have done this over the past 17 years and nobody has forced us to give any of the wages or fringe benefits that you now enjoy and don't have to pay anybody to keep. They're yours. And we want to continue that way. But if you say "No" "We don't want to continue" and if you say "Yes, we want the Textile Workers" then I can't talk to you any more about these matters. If you have a problem, you can't come to me or my father or your supervisor or Bessie or Ed — you will probably have to go and see the shop steward.]

Now you say, "Who's going to be the shop steward if they win the election?" Well, it's just like this election that we had on November 3rd, the people that got the political jobs by the president were the people that worked the hardest for him and who did the most to bring about his election and that's who is going to be the shop steward here at R. G. Barry. It's not necessarily going to be the most qualified person in your department, it's probably going to be the person that has gone out and solicited cards and handed out throw sheets and it might even be a stranger here that you don't even know. If they can get them in here and make them your shop steward,

that's exactly what they will do. I think you ought to ask yourself, "who is pushing this thing the hardest?" I don't want to know — I don't want to know — [But this is something you should know because, that's the person you are probably going to be involved with if this Union comes in.]

Now, all right, we lose the election on December 2nd, what does that mean? It means that you have made your decision that you want the Textile Workers. What are some of the possibilities that could occur at this point?

Our attorney might advise us that since we received this letter demanding recognition — that the Union has done something wrong — that they haven't complied with the law. Our attorney might say since they have violated the law you don't have to sit down and bargain with them. Now, if we do that the Union is probably not going to just sit back and let that be the end of it — they are going to file an unfair labor practice charge and we'll have another hearing. And, after we have a hearing they will write up the testimony and send it to Washington and then from Washington the case might well be appealed to Cincinnati, not to the labor board, but to the Federal Circuit Court of Appeals, the Sixth Circuit, in Cincinnati. Well you say, "okay, so what?" "What does that mean to me?" Well, this might take some two or three years. Now if you have ever been involved in court and particulary on appeals in court, you know how time-consuming they can be, so the average time that these cases normally take is two or three years. Well you say, "okay, we are tied up in court and it's two or three years — what if it's ten years?" Well here's the thing about that — since we've been involved in this Union trouble

we have been involved in a wage freeze here at R. G. Barry. Now, some of you may have seen the notices that we put up about this and some of you might not but at any rate we have been involved in a wage freeze. So, if we get in court and we are there for two or three years, that means there can probably be no wage increases given during that time. Now, personally, I wouldn't want to work at a place where I knew that no matter how well I do my job I couldn't get a wage increase. Now, the Union may say, "well, that just doesn't happen — that just can't happen". Well, it does happen and it has happened in the past.

A case on record and published in the law books is a case involving a company in a small town in Florida — The Plant City Steel Corporation — and if anybody wants to read the case, we'll make it available to them and show you that this is a matter of public record. Now down there the Boilermakers Union were trying to organize the workers at Plant City, Florida — down near Miami but those people weren't involved — it was just the people at Plant City Steel in Plant City, Florida, so the Boilermakers came around and they started handing out throw sheets and saying that we are going to get you this, we are going to get you that, so the people voted the Union in. But the man that owned the company didn't take the time to have these meetings that we are having here today and this has taken a lot of time but I'll explain to you later why we are taking the time and I think at the end of this meeting you'll be glad that we did take the time to explain these things to you — but the man at Plant City didn't — they had the election and the Boilermakers won the election by three (3) votes. Well, the owner of the plant sat back, after being advised by his

attorney, and said, "I am not going to bargain" and the reason he didn't bargain was because his attorney advised him that he felt the Boilermakers hadn't filed an affidavit in Washington with the Secretary of Labor stating that the Union was not Communistic or did not have Communists in its membership. At that time these labor unions had to file such an affidavit. Since he felt that the Union clearly violated the law he felt that he didn't have to bargain with the Union. So the Union filed a charge and they had the hearing and the transcript was sent to Washington and from Washington it went to the Fifth Circuit Court of Appeals in New Orleans, Louisiana. Some five or six years after that election was held, the Federal Circuit Court of Appeals advised Plant City Steel that the Union had not filed the affidavit with the Secretary of labor — the election was set aside, there is no **union. The hard part about this case is the fact that the people at Plant City Steel** down in Hollywood who weren't involved in this situation got **several pay increases — the people at Plant City Steel** in Plant City, Florida we don't believe got anything because they were under this wage freeze. I mentioned that case — it is not here in Columbus — but the reason that I mentioned that case to you is because that is one of the **longest times that has been** involved in one of these court cases. That **lasted five to six years. Normally the routine situation would be two or three years.** [Now, suppose we are advised, if TWUA wins this election, that everything went according to law. I have already told you that we want to keep **going in the future** as we have in the past and you told me that you want union representation. **So, we would sit down and start negotiating with the union. And if that happens we are going to sit down and start negotiating in good faith** and that's our only obligation if we lose this election —

just to sit down and negotiate and meet at reasonable times and places — we don't have to agree with all their demands and the union doesn't have to agree with all of ours.] All we have to do is talk. So we might talk to these people and just see what he can get for us in the way of a contract and just see how good the Company can come out of this situation. Now, we are sure the first thing the union will ask for is the check-off clause, which means that we hold **out of your pay each month the amount of the fees and the assessments and the monthly dues and we send them one check once a month** — not of our money — but of your money, and all the union does is take that check and put it in the bank. The union doesn't have to go around and collect it — and this is for whatever the dues are, we don't know what they are going to be, but we figure they have to be at least $5.00 a month, we don't know that but let's take $5.00 a month and 500 people at R. G. Barry — that's $5.00 a month times 500 people and that's $2500.00 and you multiply that by twelve and how much are you talking about — you're talking about around $30,000.00 a year that they are going to get, as I say, not from us but from you and this figure doesn't include an initiation fee, or whatever fines you might have imposed on you, or whatever assessments that they might impose, this is just the money that we know they are going to get and that's $30,000.00 a year!

Now, if I put that to the union or if our lawyer puts it to the union like that, I think that union might be willing to give us a pretty good deal in return for the check-off. They might even **give us a contract with less than what we are voluntarily giving now on our own.** If they didn't do that let's **suppose we got them to agree**

**to a three year contract at the existing wage rate** and at the existing fringe benefits. **This means that wages** could not be **changed for a three year period** — this means that there would be no increases in fringe benefits during this period. Now you stop and think about that for a minute. I think the **Company might come out pretty well if the union agreed to this.** The union is going to deny that they will make that kind of contract with us but it has happened before at other plants. **Now you say, "Well, I don't think the union would enter into a "Sweetheart" Contract". They might not — they might not** — Now, **let's suppose the union wouldn't sign a sweetheart contract** — [let's suppose that we wouldn't even approach them about a sweetheart contract but rather we told our Attorney to go in there and we told him, "Now, let's get the best deal we possibly can for the Company. Now let's talk about this bargaining from that standpoint, how do you approach it? How do you approach it? [**Too many people here at Barry are under the definite mistaken belief that if the union wins the election that the very next day there is going to be a contract signed containing all these promises that the union has been making.** Well, **that's not the way this thing works at all.** You sit down and you start bargaining and talking about how many holidays are we going to give, what's the vacation policy, what are the fringe benefits going to be. We **don't necessarily** start from where you are now and try to talk up — the only obligation **that the law imposes on us about bargainng and negotiating a contract is to bargain in good faith and only legal obligation concerning wages is to pay $1.25 per hour. We certainly don't mean to imply that we will go back to $1.25.** We are merely pointing out our legal obligations. **So you see you might end up with more but you might end up with less. And when that union**

**comes in and when we sit down and negotiate you put all the things that you now have and your current wage program right out there on the table and we bargain about them. If they are not agreed to and if they are not included in the contract you may not have them.]** Now, let's take one other thing — suppose we don't go into court, suppose we sit down and bargain — but suppose we don' agree and, as I said earlier, neither side has to agree to the demands of the other.

**Now, you all know who our customers are** and we are pretty well known, we are pretty well known, and do a good business, but suppose we got into this situation and suppose **that the word got out that we were involved with union trouble at R. G. Barry** and that it looked like the Company and the union weren't going to agree and there might possibly be a strike. **You know the** first person to put that **word out would be our competitors.** They'd see that that word got to our **customers just like wildfire** because if we were in a situation like that and our customers felt that we couldn't make delivery of their orders on time, **they are not gong to buy from us. They are going to buy from one of our competitors so we are probably going to start losing business and when we start losing business, we may have to start laying off people.**

Now, — say this situation **continues to deteriorate** and as we **talk, talk, talk, and can't agree, we have reached the point which the laws calls an impasse so at that point the union has one of two choices** — it can do one of two things — that is to walk away and leave us alone, in which case the union would be dead, or **to try to force me to agree to their demands.** Now, how are they going to do that — **they are going to ask you to go out here**

**on strike and walk up and down out in front of our business with a sign on your back. That's exactly what they are going to ask you to do. And you can do that. You can** get up and do that right now, if you want to. You don't have to wait for this election. **You can strike right now. You have the right. But we want you to know that the Company also has a right in this kind of strike and that is the right to operate our business.** So if you go out and walk up and down with a sign and walk this picket line, or if you don't come in because you are afraid to come across the picket line — **Whatever the reason, if you don't show up to work during a strike and if we find a replacement to come in here and work in your place, you are permanently replaced. You are not entitled to any back pay and you're not ever entitled to any more money or your job back at R. G. Barry.** Now, if that union man or anybody else has told you anything different from that, he is not telling you the truth and that's just how these strike situations work. **All of us are too inclined to think the best and not consider the worst** and say this is not going to happen to me — it won't happen here at R. G. Barry.

**Well, it can happen and it does happen.** And you should know the facts about these strike situations. And one of the many places where it has happened is at the Harriet Henderson Mills in Henderson, North Carolina. We want you to see just exactly what these strike situations can be like with the textile workers. I want you to take this reporter magazine home and look at some of the pictures and read about some of the things that do happen in strikes with the textile workers union. And the unfortunate fact about their situation at Henderson Mills — and these people **thought that it couldn't happen to**

**them** — is that **some of these people — fine people just like you and I found it impossible to continue their house and car payments and lost many things of value. No one wins in a strike situation.** Also, the superintendent's home was bombed and employees' cars were overturned and the Textile Workers Union organizers were convicted and sent to jail for 10 years for trying to **dynamite and destroy the very plant that was trying to provide these people with a living.** So these things can happen and they do happen. And you see you are putting an awful lot on the line and the Company puts a lot on the line in a strike situation, too. **And we hope there is not a strike — we don't think there will ever be a union here and if there is not a union here, there probably won't be a strike because you normally don't find strikes if you don't find labor unions. Now these are pretty hard things** for me to sit here and say and I would much rather have talked to you about more pleasant things. But if I don't tell you these things, you are not going to hear them. **These aren't half-truths that are contained in some throw sheets, these are cold, hard and truthful facts.**

Now, anything I have said can be verified. I am sure you believe me but anybody who wants to verify it, please feel free to do so. Talk about it with the union man. I have no objections to that at all. But I wanted to present the facts to you and that's why I am taking the time to talk to you about this situation. Now one other point. [Why is my family and I — why are we opposed to a union coming into Barry. **Well, the reason that we are opposed to this union coming in here is not that we are afraid of the union or afraid of what the union can get from us — believe me they can'getany more for you than you can get for yourself by coming in here and**

**talking to me man to man.** But we are opposed to this union because we might lose the flexibility that we now have. We have a lot of flexibility in this operation **right now. Under a union contract we might not have this flexibility. If we didn't have a job for you, we couldn't transfer** you to other work as we do. We might have to sent you home. We might have to lay you off. **In the past we've created work for you to avoid layoffs and to try to provide steady year round employment, the union might demand that we lay you off and hire somebody else in on the other job.** Because that means another $5.00 in monthly dues.] Every time we would do something like that we might have a grievance — every time we would do a thousand things for you that we do now, we might get involved in a grievance session and not only would we get involved in a grievance but we might end up in court. There are just so many things that could be completely changed and completely different here. [**But the primary reason that we are opposed to a union at Barry is because it could destroy the personal relationship that we have developed with each other. As I've said you couldn't talk to me or my father** or Bessie or your supervisor or anybody else about these matters — you'd have to see the shop steward. **A wall of separation could be built between us.** We could be divided. We have grown and prospered together because we have worked well together. Because we have respected each other as individuals — we have different skills and different jobs — but we've been on the same team.] It's tough to succeed in business today, foreign and domestic competition is tough as steel and we've had to fight hard to keep our customers. And there have been times when business was rough and we weren't sure we'd make it — but we did because we were united — and worked together.]

[My family has had a lot of fun out of building this business together. **But to be very frank with you neither my father or mother or I would be interested in coming to work in a hostile atmosphere. There has been a lot of talk about profits.**] We've tried to show you in pie charts the real financial picture of the Company and if you look at those things carefully, which were presented from our accountant's figures, you saw that **actually what the stockholders got were very small slices of pie. In fact, I am embarassed by the smallness of the slice.** [We've had many chances **to sell** this business in the past but we didn't want to. We **could sell** this whole operation today but we don't want to because my whole family gets a lot of fun out of this operation. **I think you know that — I think you know that I get a lot of fun, a lot of bounce from this business and it gives me something to look forward to.** In fact, I'd get no kick out of quitting tomorrow and never working again.

**But we could sell this whole operation and take the case (sic) that we get from it and put it in tax free municipal bonds and we could come out with as much profit as we get from coming in here and enjoying these headaches.** And I assure you that we do enjoy them. We like every problem that comes up every day. All we ask is the opportunity to continue in the future as we have in the past. We'd rather have our headaches together than clip coupons from municipal bonds.]

Now I promised you earlier that I would tell you why I'm taking time to talk with you — and it is taking a lot of time. But it is our position that if the union were to come in here, as we have said on the notices you have seen, we think that this union would not work to your

benefit. We felt a responsibility to bring these facts to you **so that if the union wins this election, there will not be a person in this Company that can come to me and say, "Gordon, I just wish I had known this before the election." Nobody is going to have that excuse.** You are going into that voting booth with an open and intelligent mind because we are bringing the information to you and placing it on the table for you to consider. And when you go into that booth, **you are going to be in there alone and nobody alive will know how your vote except you.** All I ask of you is to consider these facts — and consider what the union is saying. Make up your own mind. **After considering everything, its simply a question of this. "Would I be better off with people I have known and lived and worked with over the past 17 years?" Don't do me any favors and don't do this Company any favors because we are going to keep going. But just sit down with your husband and your family and talk this matter over with them — talk about some of the things we have talked about here today —they're involved as much as you are, so sit down with them and just ask yourself what is best for me and for them — the Textile Workers or R. G. Barry.**

## APPENDIX H

(NOTICE POSTED AT PETITIONER'S PLANT FEBRUARY 8, 1966.)

### SPECIAL NOTICE

It has come to my attention that some of our Barry team members have been bothered at their homes by strangers who say that they want to interrogate our people. One employee was told to be at home at a certain time so the stranger could question her.

We have no idea who these people are. One said he was a "government man". He said he did not want our team members to tell the company about the call.

The whole thing seems very strange and completely out of keeping with normal American way of life. No government people have informed us about any such thing.

I immediately checked into this with our attorney. He said you do not have to see any of these mistery callers—whether they are union men, government men, or simply some salesman trying to get into your house.

Our attorney says we should advise you of one thing: DO NOT SIGN ANYTHING THESE PEOPLE ASK YOU TO SIGN.

You have a right to have your attorney or our company attorney present before you say or sign anything!

As far as we know, the NLRB has finished its investigation of the Union "charges" that were filed after you rejected the Union on December 2. We co-operated with the NLRB and will do so at any time they want any further information to which they are legally entitled.

Don't let these strangers upset you or force you to say anything or sign anything against your will. You have a perfectly legal right to refuse to see or talk to them.

I am sorry this union trouble keeps causing you problems, and I hope that it will soon be a completely dead issue—as it should have been after you turned the Union down flat in your overwhelming vote on December 2. The important thing now is don't be frightened by any mystery callers. **You have a perfect legal right to refuse to talk with them or to sign anything.**

If anyone causes you any trouble about this, see your supervisor or call me, if you want to.

Regards, Gordon Zacks

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# In the Supreme Court of the United States

OCTOBER TERM, 1969

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No. 353

R. G. BARRY CORPORATION, PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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### OPINIONS BELOW

The order of the court of appeals (Pet. App. C, 43-44) is reported at 405 F. 2d 1212. The Board's decision and order (Pet. App. B, 3-41) are reported at 162 NLRB 1472.

### JURISDICTION

The judgment of the court of appeals was entered on February 19, 1969 (Pet. App. C, 43-44). On May

9, 1969, Mr. Justice Stewart extended the time within which to file a petition for a writ of certiorari to July 19, 1969, and the petition was filed on July 18, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether substantial evidence supports the finding of the National Labor Relations Board that the Company violated Section 8(a)(1) of the Act by threatening its employees with economic reprisals if they selected the Union as their bargaining agent.

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition (App. A, pp. 45-46).

## STATEMENT

In the fall of 1964, the Union [1] conducted an organizing campaign among the Company's employees, culminating in a Board election on December 2 (Pet. App. 13; Tr. 22-23, 95).[2] During the month of November, the Company's Executive Vice-President, Gordon Zacks, held approximately 50 meetings at which he addressed employees (Pet. App. 13; Tr.

[1] Textile Workers of America, AFL-CIO.

[2] "Tr." references are to the xeroxed portions of the transcript filed as an appendix in the court below.

22-24, 26-28). Two to four meetings were held each day with groups of twelve to fifteen employees (Pet. App. 13; Tr. 24, 29).[3] The meetings were held in the Company's 20-foot square plant lunchroom (Pet. App. 13; Tr. 23).

On the day of each meeting, the employees who were to attend were so informed by their supervisors (Pet. App. 13; Tr. 28-29). Once they arrived in the lunchroom, the employees found coffee and doughnuts, as well as copies of the Union's letter to the Company demanding recognition and copies of *America's Textile Reporter*, containing a comprehensive account of a strike at the Harriet-Henderson Cotton Mills (Pet. App. 13-14; Tr. 35, 69). Company Vice-President Bessie Scott recorded the names of those employees attending the meetings and Zacks announced that anyone who wanted to leave could do so (Pet. App. 13, 14; Tr. 68-69, 93, 99). Zacks stated that he did not want to say anything illegal and then read a prepared text without deviation (Pet. App. 14; Tr. 93-94, 112).

The central theme of Zacks' speech involved the serious economic consequences which could result from selection of the Union. Thus, Zacks stated (Pet. App. 15-16, 167-168):[4]

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[3] A mass general meeting was held before the election in order to reach those employees who could not be included in the smaller meetings (Pet. App. 14; Tr. 65-66).

[4] The entire text of Zack's speech is printed at pages 159-173 of Petitioner's Appendix.

Too many people here at Barry are under the definite mistaken belief that if the union wins the election that the very next day there is going to be a contract signed containing all these promises that the Union has been making. Well, that's not the way this thing works at all. You sit down and you start bargaining and talking about how many holidays are we going to give, what's the vacation policy, what are the fringe benefits going to be. We don't necessarily start from where you are now and try to talk up—the only obligation that the law imposes on us about bargaining and negotiating a contract is to bargain in good faith and only legal obligation concerning wages is to pay $1.25 per hour. We certainly don't mean to imply that we will go back to $1.25. We are merely pointing out our legal obligations. So you see you might end up with more but you might end up with less. And when that union comes in and when we sit down and negotiate you put all the things that you now have and your current wage program right out there on the table and we bargain about them. If they are not agreed to and if they are not included in the contract you may not have them. * * *

Zacks warned the employees of the change in working conditions which might accompany the selection of the Union, as follows (Pet. App. 16-17, 170-171):

Why is my family and I—why are we opposed to a union coming into Barry. Well, the reason that we are opposed to this union coming in here is not that we are afraid of the union or afraid of what the union can get from us—believe me they can't get any more for you than

you can get for yourself by coming in here and talking to me man to man. But we are opposed to this union because we might lose the flexibility that we now have. We have a lot of flexibility in this operation right now. Under a union contract we might not have this flexibility. If we didn't have a job for you, we couldn't transfer you to other work as we do. We might have to send you home. We might have to lay you off. In the past we've traded work for you to avoid layoffs and tried to provide instead year round employment, the union might demand that we lay you off and hire somebody else on the other job. Because that means another $5.00 in monthly dues. Every time we would do something like that we might have a grievance—every time we would do a thousand things for you that we do now, we might get involved in a grievance session and not only would we get involved in a grievance but we might end up in court. There are just so many things that could be completely changed and completely different here. But the primary reason that we are opposed to a union at Barry is because it could destroy the personal relationship that we have developed with each other. As I've said, you couldn't talk to me or my father or Bessie or your supervisor or anybody else about these matters—you would have to see the shop steward. A wall of separation could be built between us. We could be divided. We have grown and prospered together because we have worked well together. Because we have respected each other as individuals—we have different skills and different jobs—but we've been on the same team. * * *

Finally, Zacks raised the possibility that the Company would sell the plant if the employees selected the Union to represent them (Pet. App. 18-19, 172):

> My family has had a lot of fun out of building this business together. But to be very frank with you neither my father or mother or I would be interested in coming to work in a hostile atmosphere. There has been a lot of talk about profits. We've tried to show you in pie charts the real financial picture of the Company and if you look at those things carefully, which were presented from our accountant's figures, you saw that actually what the stockholders got were very small slices of pie. In fact, I am embarrassed by the smallness of the slice.
>
> We've had many chances to sell this business in the past but we didn't want to. We could sell this whole operation today but we don't want to because my whole family gets a lot of fun out of this operation. I think you know that—I think you know that I get a lot of fun, a lot of bounce from this business and it gives me something to look forward to. In fact, I'd get no kick out of quitting tomorrow and never working again. But we could sell this whole operation and take the cash that we get from it and put it in tax free municipal bonds and we could come out with as much profit as we get from coming in here and enjoying these headaches. And I assure you that we do enjoy them. We like every problem that comes up every day. All we ask is the opportunity to continue in the future as we have in the past. We'd rather have our headaches together than clip coupons from municipal bonds.

Zacks also instructed the supervisors to make themselves accessible to the employees and to report to him the issues in which the employees were interested (Pet. App. 21-22; Tr. 39-40). Zacks' purpose was to attempt to evaluate the impact of the meetings upon the employees (Pet. App. 22; Tr. 40). During this period, certain employees were questioned by supervisors concerning their union sympathies and the reasons why other employees might be interested in unionization. (Pet. App. 22-24; Tr. 94-97, 140.)[5]

The Union lost the December 2 election and filed unfair labor practice charges on December 9, 1964.[6] On February 8, 1965, while the charges were pending, the Company posted a notice (Pet. App. 10-12, 175-176) urging its employees not to cooperate with those seeking to interview them (Pet. App. 10; Tr. 182-184). Shortly thereafter, Zacks was informed that the Board investigation was proceeding at that time; he neither removed the notice nor amended its contents (Tr. 193-194).

The Board adopted the Trial Examiner's finding that the Company violated Section 8(a)(1) of the Act by threatening its employees with more difficult working conditions, reduction of their wages, and loss of work if the Union were selected as their bargaining representative; by interfering with the right of its employees to give statements to Board

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[5] In addition, the Board found that as early as October 8, 1964, employee Cooley was questioned by her supervisor concerning her own and other employees' union sentiments (Pet. App. 23-24; Tr. 130-133).

[6] The charges were amended on December 24, 1964.

agents; and by interrogating employees as to their union affiliation (Pet. App. 4, 36). The Board ordered the Company to cease and desist from the unfair labor practices found, and to post the appropriate notices (Pet. App. 36-38).

The court of appeals, in a *per curiam* order, enforced the Board's order (Pet. App. C 43-44).

## ARGUMENT

In *National Labor Relations Board* v. *Gissel Packing Co.*, No. 573, O.T., 1968, decided June 16, 1969, this Court stated that, in order to be entitled to the protection of the First Amendment or Section 8(c) of the Act, an employer's predictions of the effects of unionization "must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionizaion" (slip op., p. 40). But "[i]f there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment" [7] (slip op., pp. 40-41).

[7] This Court's opinions in *National Labor Relations Board* v. *United Steelworkers*, 357 U.S. 357, and *Linn* v. *United Plant Guard Workers of America, Local 114*, 383 U.S. 53 (Pet. 12, 13), are, of course, entirely consistent with this standard.

Consistent with these teachings, the Board correctly found that Vice-President Zacks' speech contained statements which exceeded the boundaries of privileged speech and constituted interference, restraint and coercion in violation of Section 8(a)(1) of the Act. Thus, while making it clear that the Company was against unionization, and after emphasizing the Company's ultimate control over wages and working conditions, Zacks warned the employees of the adverse consequences which unionization might bring, such as loss of jobs, layoffs, and deprivation of benefits previously enjoyed. Zacks also warned the employees that, even though he had passed up opportunities to sell the Company in the past, he and his family would not be interested in coming to work in a hostile atmosphere and they could just as easily take their profits from the business and "clip coupons from municipal bonds," *supra*, at pp. 4-6. These remarks were not "predictions of 'demonstrable economic consequences' ", nor were the actions threatened related to economic necessities. Thus, the Board properly found that these remarks implied threats of retaliatory action.[8]

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[8] The cases cited by petitioner (Pet. Br. pp. 14-16) are not inconsistent with this conclusion, since the determination whether an employer's remarks constitute threats of reprisal prohibited by Section 8(a)(1) or an expression of views and opinion protected by 8(c) turns primarily on the facts of the particular case. Moreover, those cases preceded this Court's decision in *Gissel Packing Co., supra*, and it is doubtful whether the views expressed with respect to the scope of Section 8(c) of the Act in those cases accord with *Gissel*.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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